UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

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In Re:	) Case No. 2:17-Bk-21386-SK
	) Chapter 7
ZETTA JET USA, INC., ET AL.	)
	) Los Angeles, California
Debtors.	) Wednesday, February 15, 2023
_____	) 9:00 AM

ADV#: 2:19-ap-01382-SK
KING v. JETCRAFT CORPORATION, ET AL.

#10.00 HRG RE CHAPTER 7 TRUSTEE'S SEVENTH MOTION UNDER LBR 2016-2 AND BK CODE SECTION 105 FOR APPROVAL OF CASH DISBURSEMENTS NECESSARY FOR THE ADMINISTRATION OF THE DEBTORS' ESTATES
DOCKET 2040

#11.00 HRG RE CHAPTER 7 TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT BY AND AMONG THE CHAPTER 7 TRUSTEE AND JETCRAFT CORPORATION, JETCRAFT GLOBAL, INC., JETCOAST 5000-5 LLC, ORION AIRCRAFT HOLDINGS LTD., JETCRAFT ASIA LIMITED, FK GROUP LTD, FK PARTNERS LIMITED, AND JAHID FAZAL-KARIM
DOCKET 1995

#12.00 STATUS CONFERENCE RE COMPLAINT
DEFENDANT(S): FK PARTNERS LIMITED, JETCRAFT DEFENDANT(S), FAZAL-KARIM, BOMBARDIER DEFENDANT(S), AND ECN CAPITAL
FR. 12-11-19, 1-22-20, 3-11, 7-22, 9-30, 10-14, 2-17-21, 3-31, 6-30, 7-14, 9-15, 4-27-22, 6-29, 10-12, 11-08, 11-30,
DOCKET 1

#13.00 HRG RE FOURTH INTERIM APPLICATION OF DLA PIPER FOR ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED AND FOR REIMBURSEMENT OF EXPENSES AS COUNSEL TO THE CHAPTER 7 TRUSTEE
PERIOD: 7/1/2021 TO 9/30/2021
FEE: $1,604,684.00, EXPENSES: $78,846.07
FR. 3-2-22, 3-9, 4-27, 6-29, 10-12, 11-08, 1-25-23,
DOCKET 1729

#14.00 HRG RE FIFTH INTERIM APPLICATION OF DLA PIPER FOR ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED AND FOR REIMBURSEMENT OF EXPENSES INCURRED AS COUNSEL TO THE CHAPTER 7 TRUSTEE
PERIOD: 10/1/2021 TO 3/31/2022,
FEE: $3,113,631.50, EXPENSES: $95,019.68
FR. 10-12-22, 11-08, 1-25-23, FR. 6-29-22
DOCKET 1852

#15.00 HRG RE SIXTH INTERIM APPLICATION OF DLA PIPER FOR ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED AND FOR REIMBURSEMENT OF EXPENSES INCURRED AS COUNSEL TO THE CHAPTER 7 TRUSTEE
PERIOD: 4/1/2022 TO 6/30/2022
FEE: $1,603,758.50, EXPENSES: $27,967.45.
FR. 11-08-22, 1-25-23,
DOCKET 1949

#16.00 HRG RE SEVENTH INTERIM APPLICATION OF DLA PIPER FOR ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED AND FOR REIMBURSEMENT OF EXPENSES INCURRED AS COUNSEL TO THE CHAPTER 7 TRUSTEE
PERIOD: 7/1/2022 TO 9/30/2022,
FEE: $1,067,827.00, EXPENSES: $27,341.26
FR. 1-25-23,
DOCKET 2018

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SANDRA R. KLEIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):

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LOS ANGELES, CALIFORNIA, WEDNESDAY, FEBRUARY 15, 2023, 9:29 AM

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(Call to order of the Court.)

THE CLERK: Please come to order. This court is now in session, the Honorable Sandra R. Klein presiding.

THE COURT: Good morning. This is Judge Klein. And even though we're not in the courtroom, today is an official court hearing, and everyone is expected to treat it like they would if they were in court. The audio of today's hearing is being recorded, so each time you speak and each time you speak after someone else has spoken, please identify yourself so that the record is clear.

The remaining matters on calendar are all in this Zetta Jet case. I'm going to take all appearances now. I'm just going to go in the order that I see people on the screen. If you wish to record your appearance, please turn your video on. If I don't see your video on, I will not call on you.

So the first person I see is Mr. Ciatti.

MR. CIATTI: Good morning, Your Honor. Michael Ciatti from King & Spalding on behalf of the FK and Jetcraft defendants.

THE COURT: Good morning.

Mr. Roselius.

MR. ROSELIUS: Morning, Your Honor. Joe Roselius on behalf of the trustee.

THE COURT: Good morning.

Mr. King.

MR. KING: Good morning, Your Honor. Jon King, the Chapter 7 trustee.

THE COURT: Good morning.

Mr. Jordan.

MR. JORDAN: Good morning, Your Honor. Jon Jordan of King & Spalding on behalf of the Jetcraft settling defendants. I have a pro hac that is pending before the Court.

THE COURT: Thank you.

Mr. Bernstein.

MR. BERNSTEIN: Yes. Good morning, Your Honor. Michael Bernstein of Arnold & Porter on behalf of Universal Leader Investments and Glove Asset Investments.

THE COURT: Good morning.

Mr. Lyons.

MR. LYONS: Good morning, Your Honor. John Lyons on behalf of the trustee.

THE COURT: Good morning.

Ms. Fornos.

MS. FORNOS: Good morning, you Honor. Caroline Fornos with Pillsbury Winthrop on behalf of the Bombardier entities.

THE COURT: Good morning.

Mr. Bovitz.

MR. BOVITZ: Good morning. J. Scott Bovitz, Bovitz &

Spitzer, on behalf of the fee examiner, Nancy Rapoport.

THE COURT: Good morning.

Mr. Torosian.

MR. TOROSIAN: Good morning, Your Honor. Jeff Torosian of DLA Piper for the trustee.

THE COURT: Good morning.

Prof. Rapoport.

PROF. RAPOPORT: Good morning, Your Honor. Nancy Rapoport, fee examiner.

THE COURT: Good morning.

Ms. Azlin.

MS. AZLIN: Good morning, Your Honor. Kristina Azlin with Holland & Knight on behalf of objecting creditor, CAVIC Aviation Leasing Ireland 22 Company DAC.

THE COURT: Good morning.

I don't see any other videos on, so I'll assume no one else wishes to be heard today.

MR. LINDEMANN: Your Honor, this is Blake Lindemann. I'm appearing via audio on former employees on the DLA Piper applications only.

THE COURT: Okay. Hold on. I'm going to change your screen name, Mr. Lindemann.

MR. LINDEMANN: Thank you.

THE COURT: Oh, someone already got you. Okay. Perfect.

Anyone else who wishes to be heard?

Okay. Before we get started, I want to put on the record that my term law clerk was invited to a judicial clerkship event in late January of this year. She did not realize that it was hosted by a law firm, and in particular, by King & Spalding, who represent the FK and Jetcraft defendants, until after she arrived at the restaurant where the event was being held.

During the event, she engaged in small talk only. She did not discuss any case that is before me, nor did she discuss the inner workings of my chambers. A week later, when I learned that she had attended the event, my law clerk sent an email to everyone at King & Spalding whose email addresses she had. In that email, my law clerk stated the following.

She did not realize the event was hosted by a law firm and in particular that firm. If she had, she would not have RSVP'd or participated. She also stated that she would not apply for a position with King & Spalding during her clerkship or at any time in the future, and she would not entertain any unsolicited offers from that firm during her clerkship or at any time in the future.

Since participating in the event, my term law clerk did not do any substantive work on the 9019 motion or any other Zetta Jet matter. She has been walled off from all Zetta Jet matters, and she will continue to be walled off for the

remainder of her clerkship. I believe that there is nothing more that needs to be said regarding this matter, and I intend to move forward with today's hearings.

I would like to start with matter number 11, the 9019 motion. Who will be arguing on behalf of the trustee?

MR. ROSELIUS: Good morning, Your Honor. Joe Roselius for the trustee.

THE COURT: Okay. And Ms. Fornos, I assume you'll be arguing on behalf of BAC?

MS. FORNOS: Yes, Your Honor.

THE COURT: Okay. And I issued an order in terms of the procedures.

So Mr. Roselius, you'll have fifteen minutes. Ms. Fornos, you'll have fifteen minutes. Mr. Roselius, if you want to reserve time to respond, you can. And then there will be five minutes, Mr. Roselius, to address the position papers by CAVIC as well as Universal Leader.

So Mr. Roselius, would you like to reserve any time?

MR. ROSELIUS: Your Honor, just one point of clarification. Mr. Lyons will also be arguing the CAVIC and Universal Leader pieces of this.

THE COURT: Okay. That's fine. That's fine. So for the first fifteen minutes, which addresses the Bombardier response, Mr. Roselius, would you like to reserve any time?

MR. ROSELIUS: Three minutes, Your Honor.

THE COURT: Okay. Thank you.

So I'll ask that my staff set the clock for twelve minutes, and then you'll have three minutes to respond.

All right. And I am going to be typing. Sometimes I write in longhand, but it's easier to type, so I'm going to be typing while you speak.

Okay. Mr. Roselius, the floor is yours.

MR. ROSELIUS: Thank you, Your Honor.

Just a brief overview of the settlement, under the terms of the settlement, the settling defendants will pay 9.5 million to the trustee in two installments, one after approval, another in July of this year. And the settlement includes some significant protections for the trustee if the settling defendants are unable to make the second payment, either to take a consent judgment or retain the first installment and continue the litigation. The settling defendants are also agreeing to withdraw proofs of claim and then a mutual general release. And then really what is, I think, the focus of the discussion here today is a good-faith settlement finding under California Civil Code Section 877.6 and a bar order reflecting the same.

So just to start with the 9019 factors, the Court need only determine that the settlement agreement is reasonable, fair, and equitable and that the proposed settlement exceeds the lowest point in the range of reasonableness, giving

deference to the trustee's business judgment. And the considerations include probability of success in the litigation; difficulties, if any, with collection; complexity, expense, inconvenience, and delay of continuing litigation; and then the interest of the creditors in getting the largest possible recovery as quickly as possible.

The proposed settlement needs all of those factors. It's well within the range of reasonableness considering the surviving claims, the claims that are on appeal against the settling defendants, the inherent risk of litigation, the ongoing burden and expense, the profits that we allege were earned by the settling defendants, and perhaps most significantly, the collection risk, both based on the overall financial status of the settling defendants and the international nature of the settling defendants in their business, including the potential need to collect in foreign countries. So taking all that into account, the trustee believes the settlement is in the best interests of the creditors.

In terms of Bombardier's objection, first, the Court may enter a bar order in connection with a 9019 settlement motion. A number of cases cited in our reply have held the entry of a bar order pursuant to a settlement does not require a separate adversary proceeding. None of the objecting parties have cited a case from the Ninth Circuit that holds otherwise.

The Hartog case from Florida, which we cited in our brief, is the closest to the fact pattern here. The district court affirmed a bar order in a 9019 order and expressly rejected the Rule 7001 argument Bombardier makes.

Other cases besides Hartog, also cited in our reply at pages 4 and 5, approved similar bar orders in the 9019 context. That's Land Resource, Fundamental Long Term Care, Superior Homes and Investments, and Munford.

The objecting parties cite no case from the Ninth Circuit holding otherwise in the context of a statutory settlement bar, like Section 877.6. They only cite Zale, a Fifth Circuit case that is not binding on this Court, and it's not in the context of a statutory bar.

Hartog and the other cases we cited provide the better approach to approving a litigation bar authorized by Section 877.6 for several reasons. First, the text of Rule 7001(7) addresses equitable relief, not a statutory bar like what's at issue here. It refers to injunctions and other equitable relief. It addresses, essentially, injunctions governed by Federal Rule of Civil Procedure 65, which incorporates the four well-known prongs for injunctive relief, irreparable harm, lack of adequate remedy at law, balancing of equities, and public interest.

In this case, those equitable tests are not relevant to the contribution bar because it involves no balancing of the

equities. It's really a black-letter statutory test governed by six different standards that are described in our brief on page 6. And I'll get to those, how they apply to this specific settlement, in a minute. But here, the settlement meeting these different factors as a matter of law bars contribution claims of the type set out in the proposed order.

So second, Bankruptcy Code Section 105 permits the court to enter an injunction through the 9019 process. That's in Hartog as well. It talks about how Section 105 gives the court the procedural power to enter a bar as long as it is not the kind of prohibition that you would have to look to Rule 65 to obtain. And it's important to note here, Your Honor, that the issue is not whether Section 105 creates a substantive right to a contribution bar, only that Section 105 gives the Court procedural order to consider a substantive right created by the California statute.

Third, Bankruptcy Rule 7016 governs the adversary proceeding the trustee is settling. It gives the Court broad authority to take any appropriate action to settle a case or use special procedures to assist in resolving the dispute. And in this case, the California Code Section 105 and the All Writs Act provide the substantive and procedural authorization to enter the settlement order.

The Zale case is not only not binding on this Court, but it doesn't address these points. It involved an injunction

under Rule 65, not a statutory bar. It did not take into account the effect of Rule 7016 or the All Writs Act. It simply assumed that Rule 7001 would apply to the statutory -- to statutory settlement bars.

And we also cited the Mirant case, decided within the Fifth Circuit after Zale, and in Mirant, the district court approved the settlement with an injunction in connection with the 363 sale motion. A separate adversary proceeding was required for the injunction because it was part of the 363 order, just as the contribution bar is part of the 9019 order.

Requiring an adversary proceeding here would be duplicative because the order settles an adversary proceeding. We already have an adversary proceeding with Bombardier, the one we are settling right now. It'd be redundant and inefficient to open another adversary proceeding simply to settle this one -- to settle the first one. The 9019 motion, was served in accordance with Bankruptcy Rule 2002, so it went to far more parties than would have applied in a simple adversary proceeding. Bombardier also doesn't point to any procedural rights that it was denied -- that it would have received if this had been open as an adversary proceeding.

The requirements to approve this motion under Rule 9019 are effectively a finding that California Code Section 877.6 applies. And if you approve this settlement motion, then almost by definition, Section 877.6 would apply. But we also

meet the factors in 877.6, and it's Bombardier's burden, not ours, to show that those factors have not been met. A separate adversary proceeding would only affirm what we're asking for in the 9019 motion, with the additional time and expense lost from opening up a new adversary proceeding. And so as a practical matter, a new adversary proceeding would be no different from this contested motion.

Now, moving on to the next point, California law, not New York law, governs these issues because California law governs the tort claims against the settling defendants. And thus, the settling defendants should be afforded the protections of Section 877.6. We cited the Nucorp Energy case that chose California law over New York and Texas in a similar context.

Now, Bombardier contends that the claims bar should be denied because it seeks to bind nonparties to California law, but that's not really the right way to look at this. The Court has determined that California law applies to the claims against the defendants, and Bombardier cites nothing for the idea that the state law that governs claims against it should govern other parties' settlements. It's telling that Bombardier cites no authority for this position, despite good-faith settlement issues that come up in tort settlements in hundreds of courtrooms across the country each day. If the Court accepted Bombardier's position, the Court would have to

identify and rule on all possible state laws that might apply to all possible claims that might involve all possible third parties before approving any settlement. That would be inefficient and wasteful.

It also cites nothing for the more specific proposition that Bombardier's choice of law in purchase agreements to which the settling defendants were not parties would affect the choice of law governing the settlement, or why New York law would govern when, for example, Quebec law governs its agreements with the settling defendants. It cites several inapposite cases in a string cite on page 10 of its brief, but none involved the California settlement statute at issue here, and they only apply for the unremarkable proposition that settlement agreements do not bind nonparties. Nucorp, I think, is more persuasive here and involves a more direct, factually-analogous situation.

In terms of whether the bar order exceeds the scope of Section 877.6, the trustee and the settling defendants have agreed to submit a revised bar order, making clear that its scope matches that of the statute. And the relief in the revised bar order will be the same as the relief under the statute.

Moving on to the good-faith settlement factors, so Bombardier contends that the trustee has not satisfied the good-faith factors. But it really focus only on proportionate

liability, and that's incorrect for several reasons.

First, Bombardier has the proof to show that the settlement was not made in good faith under Section 877.6. The considerations are not just proportionate liability. There's at least five other considerations, and it's more of a totality-of-the-circumstances test. Those include the amount paid in the settlement, recognition that the settlor should pay less than it would have if found liable after trial, the allocation of settlement proceeds, the financial conditions and insurance limits of the settling defendants, which is effectively collectability, and then evidence of collusion, fraud, or tortious conduct.

Bombardier fails to meet its burden to show that the settlement is so far out of the ballpark and grossly disproportionate to be inconsistent with the objectives of Section 877.6, which are to encourage settlement without permitting a bad-faith settlement. Bombardier tries to make this a math problem, but the Court is not required to determine liability with precision, or say, with exactitude, that the settlement is exactly what the settling defendants' share of proportionate liability would be.

And here, the collectability risk alone shows that the settlement was made in good faith. As the Tech-Bilt court noted, one of the considerations is the financial conditions and insurance policy limits of settling defendants. Bombardier

here is a publicly traded company, involves much less collection risk, whereas the settling defendants involve a significant collection risk, in the trustee's judgment.

THE COURT: Mr. Roselius, you have about a minute left of your twelve minutes.

MR. ROSELIUS: Okay. Another key consideration is the amount of the settlement. This isn't a nominal settlement, but nine and a half million dollars.

And also, keep in mind, the Court dismissed Bombardier entirely. So Bombardier claims it will be left holding the bag, but that only is true if the Court's decision is substantially or entirely overturned on appeal. If that happens, then Bombardier's liability will be much more significant in this court as opposed to what it is now, as things stand today.

And also, Judge Gross, the mediator, submitted a declaration -- submitted two declarations confirming the parties' good faith. And I understand he's on the call today, if necessary, if the Court wants to ask any questions. Judge Gross served a full term as a highly esteemed judge on the bankruptcy court for the District of Delaware and is also a highly respected mediator, and you have both of his declarations.

In terms of jurisdiction, the Court has related-to jurisdiction for any matter directly or indirectly related to

bankruptcy. And here, these kind of issues would be directly related to any sort of contribution or indemnity claim between Bombardier and the settling defendants.

And finally, the bar order is not a de facto third-party release, because I mean, first of all, other courts have approved this. It's not prohibited by Bankruptcy Code Section 524(e). That deals with the effect of discharge on claims. It doesn't apply here because the debtor is not getting a discharge.

The trustee has never argued that indemnity and contribution claims would be barred by virtue of Section 524, but rather under Section 877.6. And the case that Bombardier cites, which is called Presta, actually makes the same point against them and supports our argument. Thank you, Your Honor.

THE COURT: Thank you, Mr. Roselius. You actually ended up using about all of your fifteen minutes, but I'll give you about a minute or so to respond to Ms. Fornos' argument.

Ms. Fornos, are you ready to proceed?

MS. FORNOS: Yes, Your Honor. Thank you very much.

THE COURT: Thank you.

MS. FORNOS: Your Honor, in response to Mr. Roselius' arguments, I think we can frame this into three larger points whether good faith has been satisfied and specifically, whether the Court has or not to make a finding of fact as to good faith.

The second category would be the California law, and we'll explain why. Absolutely, as the Court has found, it is New York law that applies to all the claims that have been brought by the trustee against Bombardier.

And we'll address the injunction because although they have proffered that they will amend what has been submitted, the motion that's still pending before the Court is that which was filed and which exceeds the bounds of 877.

So starting with the issue of good faith, there's no dispute, Your Honor, it's this Court that has to make a finding under the Tech-Bilt factors. And with all respect to Judge Gross -- he was wonderful, we had the pleasure of meeting him -- his statement on the record that the parties considered Tech-Bilt is insufficient for Bombardier to determine and to establish that that good faith has been made, and it's insufficient, more importantly, for the Court to determine the good faith has been established.

And all that the Court needs to do to determine that good faith has not been established and that Bombardier can meet its burden of proof is simply by looking at the admissions that the trustee has made. At page 15 of the reply, at lines 19 through 21, the trustee admits it is impossible at this point to determine either the damages that the trustee will recover or the relative liability of the settling defendants and Bombardier. That is an admission that they cannot meet the

very first and most important element of the good-faith analysis under Tech-Bilt, and that's why they're not entitled to the claims bar.

And yes, there are other deficiencies. We have no -- notwithstanding Mr. Roselius' representations, we have no visibility as to the settling party's financial condition. We have no visibility as to how they intend to allocate the various payments vis-a-vis the two estates. Certainly, we have no visibility as to insurance policy limits.

And it's not just us, Your Honor. It's the Court. The California Supreme Court has made clear that this is an issue of fact. And it is the Court's responsibility once a claims bar is put forth to make a finding of fact on this issue.

And at the minimum, Your Honor, Bombardier would be entitled to seek discovery on this issue and to peel back the layers that are set forth in the affidavit and declaration that's been submitted by Judge Gross. That's not to say that it's not correct. We just don't have any visibility, and the Court needs to have the sufficient facts to make that finding.

As to the issue of California law -- and one other point, Your Honor, on the good faith, which is important. The good faith and 877 is not for the benefit of the settling defendants. It's for the benefit of the nonsettling defendants.

The objective of that analysis that the Court needs to undertake is to preserve the equities. And here, it is Bombardier that is being adversely affected by the claims bar that the trustee seeks to impose upon the nonsettling defendant. And this brings me to the issue of California law and why California law should not apply in this action.

The Court has already determined that all claims against Bombardier, these joint tortfeasor claims, are actually governed by New York law. The issue is not, Your Honor, the agreements between Bombardier and Jetcraft. The issue here is the credit allocation of what this claims bar does.

The claims bar is in two parts. One, it bars a nonsettling defendant from bringing an action against the settling defendant. But the credit allocation, what a party, the nonsettlor, owes to the debtor in that action is actually governed by the contract between the debtor and Bombardier. It's not governed by the contract that may exist between joint tortfeasors.

The credit that will have -- the adverse effect of applying California law in this case to the contractual relations between Bombardier and Zetta are illustrated by simply underscoring that under New York law, Bombardier is entitled to the greater of the full amount of the allocated share of liability to the settling defendants or the amount paid by the settling defendants.

In a hypothetical where a hundred million dollars is found to be at issue, and in a hypothetical here, where nine million dollars is attributable to Jetcraft as the paying -- as the settling defendant, but ninety-nine percent of the liability is attributable to the settling defendant. The only defendant left with viable claims that the Court has not dismissed and the defendant that features prominently throughout the complaint as having actually made allegedly payments, in that analysis, under California law, the only credit that Bombardier would be entitled to, assuming a ninety-nine percentage of liability against Jetcraft, in that case, under the California law, Bombardier would be responsible for ninety-one million dollars because the only credit it can get are the nine million that Jetcraft is settling.

But under New York law, we would be entitled to ninety-nine percent credit, meaning only one million is left. The absolute prejudice to Bombardier is illustrated by simply comparing those two statutes. And importantly, Your Honor, it's not just the claims bar. It's the second component. It's the credit to which Bombardier is entitled, and that is an obligation vis-a-vis Bombardier and Zetta. And that is governed by the purchase agreement that Bombardier entered into.

Finally, Your Honor, with respect to the injunction, as the Court is aware, a motion was filed and purported to

bind all parties, current defendants and future defendants, against bringing any claims against the settling defendant. Your Honor, there cannot be any clearer action than injunctive relief -- than the trustee seeking injunctive relief to find a whole host of individuals who have not received notice. And although Mr. Roselius has indicated that they're willing to revise these provisions, these provisions have not been filed with the Court. There is nothing on the record that the Court can actually consider by way of a written proposed settlement.

Accordingly, Your Honor, in this case, one thing to underscore. If Jetcraft and the trustee want to settle, they can settle. But the minute that they want this Court to adopt a claims bar in a situation where Bombardier is contesting the good faith, that is where the Court needs to consider that either there's enough on the record to confirm that there is a lack of good faith, i.e. admissions, that the trustee cannot satisfy the Tech-Bilt factors because of the rough approximation of plaintiffs' total recovery. They admit they can't (indiscernible) assessment. They admit that they can't make the proportional reliability assessment.

This is a matter where the Court must make that finding, and if the Court believes more is needed, then at a minimum, Your Honor, we request discovery on these issues to enable to have an ability to fully assess these issues.

THE COURT: Thank you, Ms. Fornos.

Mr. Roselius, would you like to respond? You have about a minute.

MR. ROSELIUS: Yes, Your Honor.

Ms. Fornos made a false statement in that we didn't put anything on the record about the scope of the injunction. It's on page 14 of our reply brief. We state specifically how we would modify it.

Whatever credit Bombardier is allowed to get is not affected by Jetcraft getting the benefit of the California statute, which clearly applies to our claims. And there's no cite -- they cite no case otherwise.

The hypothetical she talks about will never happen because the only way that type of situation happens is if the case comes back down on appeal and Bombardier is found to be significantly more liable than in the hypothetical.

And with respect to whether it's possible to determine proportionate liability, that is not what we said in the brief. The point is that it's impossible to determine with exactitude exactly what the proportionate liability will be without going all the way through trial. Here, the Court's only required to make an educated guess. That's well within the record.

The settlement amount is not nominal. It's related to proportionate liability. It's related to the amount of the alleged profits that the settling defendants earned. And it's entirely appropriate. There's no showing here. Bombardier

cannot meet its burden to show a lack of good faith. And it's Bombardier's burden, not the trustee's. Thank you.

THE COURT: Thank you, Mr. Roselius.

All right. Mr. Lyons, do you wish -- you have five minutes to address the issues, and solely the issues, that were raised in -- I'll start with CAVIC, and then you can go on to Universal Leaders.

So Mr. Lyons.

MR. LYONS: Thank you, Your Honor.

Well, Your Honor, first of all, Mr. Roselius covered a lot of the points that are raised in CAVIC's joinder. CAVIC's paper adopts a lot of the arguments used by Bombardier, and those have been addressed by Mr. Roselius.

CAVIC also addressed that the claims went beyond the scope of 887.6 (sic). Again, that's been addressed by the revised order, which tracks the California statute and does not go beyond that. So we believe that has been addressed.

And Your Honor, a more fundamental issue is that the trustee has not alleged tort claims against CAVIC. It hasn't alleged claims in either the Jetcraft action or the CAVIC action. And so CAVIC is -- since they're not alleged to have been tortfeasor, I'm not sure how they have an objection based upon a disproportionate adjudication of liability in the measuring factors, Your Honor, including they make a statement in paragraph 7 that the trustee's seeking more than 200 million

from all defendants and can't show proportionate liability of the settling defendants. Well, Your Honor, CAVIC is not included even in that 200-million-dollar number. The trustee has not alleged tort claims against CAVIC.

Your Honor, and fundamentally, again, we submitted the declaration of Judge Gross, who was appointed by Your Honor to conduct a mediation. He conducted that mediation, and he has stated his view on the trustee's and the parties' good faith in reaching that -- in reaching that settlement.

So unless Your Honor has any questions, I believe that addresses the points raised in CAVIC's opposition.

THE COURT: Thank you. Mr. Lyons, just one point of clarification. I'm not sure that I appointed Judge Gross. I authorized the parties to go to mediation, but I certainly didn't select Judge Gross. That was a mutual agreement between the trustee and the defendants. I just wanted --

MR. LYONS: Right.

THE COURT: -- to clarify that. Correct, Mr. Lyons?

MR. LYONS: Yes, correct. You didn't --

THE COURT: Okay.

MR. LYONS: -- appoint him but approved his services as a mediator --

THE COURT: Correct --

MR. LYONS: -- (indiscernible).

THE COURT: -- I approved payment of his fees, but I

certainly didn't say you have to go to Judge Gross or go to any other mediator. I just said I thought that the case would definitely benefit from mediation.

MR. LYONS: Correct, Your Honor.

THE COURT: All right. Thank you.

And Ms. Azlin, would you like to be heard?

MS. AZLIN: Yes, Your Honor. I will try not to repeat most of the arguments that were addressed by Ms. Fornos, other than to say that CALI, as Mr. Lyons recognized, joined in most of the arguments by Bombardier and urges this Court to deny the current motion to approve the Jetcraft settlement for the reasons set forth in the underlying documents.

I do want to emphasize one point, and that is first, Your Honor, as you know, CALI is not a party and never has been properly made a party to the adversary proceeding. And as such, we believe that CALI would be unfairly prejudiced by the scope and nature of the current order sought by the trustee and the settling parties to that case.

And on this issue, Your Honor, Mr. Lyons just put his finger on, in fact, the exact issue that we find problematic here, and that is that, again, CALI is not a party to the Jetcraft adversary proceeding itself. As Your Honor knows, the trustee attempted to belatedly add CALI to that case. That effort was rejected because, among other reasons, the claims that the trustee sought to add CALI to were barred by the

applicable statute of limitations.

Despite the fact that CALI's not a party to that case, we believe that the trustee is seeking to do here that which it would not be allowed to do and in fact would not be effective had the motion for a good-faith settlement determination been properly filed in that adversary proceeding as we believe it ought to have been.

The terms of the California statute is clear. We believe it provides in relevant part that, "Any party to an action in which it is alleged that two or more parties are joint tortfeasors or coobligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more of the alleged joint tortfeasors or coobligors.

Your Honor, again, CALI is not alleged in this action, where the trustee has purported to file this motion ,or any other to be an alleged joint tortfeasor or coobligor with any of the settling Jetcraft defendants, nor does it believe that it has any such coliability. And so we believe that the scope of the relief sought by the trustee and the settling defendants as set forth in the settlement agreement is just patently overbroad.

Your Honor, the trustee now attempts to pretend that the 877 order sought and the request for injunction in the pending motion are one and the same. We believe that the

settlement agreement is clear on this issue, as was the original proposed order sought by the trustee, and that settlement agreement, again, upon which the entire settlement is expressly contingent, right, is clear. And in the section of the settlement agreement governing the Rule 9019 approval order that the trustee was to seek here had two different sections.

Section C required the trustee to seek an order making all necessary findings and concluding that the settlement is in good faith pursuant to California Code of Procedure 877.6. And section D requires that the trustee seek an order -- and again, the entire settlement is contingent upon this -- ordering that, "All the parties to the Chapter 7 cases and all current or future defendants in the litigation are barred, enjoined, and prohibited from seeking contribution or indemnity in any respect from the settling defendants on account of claims asserted in the litigation."

Now, this is actually in the terms of the settlement agreement itself, and despite Mr. Lyons' and Mr. Roselius' statements to the Court today that they intend to submit a revised proposed order, that is not what the settling defendants and the trustee agreed to in the settlement agreement itself, again, which is contingent upon this Court issuing an order that hits those two points. We believe that these are two different types of relief sought, section C and

section D, one being the 877 potential order and one being the claims bar. We believe that those are governed by different substantive and procedural rules.

To the extent, Your Honor, that the trustee only seeks the protection of Section 877.6 of the California Code of Procedure, we believe that the parties were required to file the proper motion under that statute in the Jetcraft adversary proceeding itself, where it would be limited in its impact and effect on the parties to that proceeding and the alleged joint tortfeasors and coobligors, if any, to that proceeding.

And again, this is if they can meet the underlying Tech-Bilt factors, which with again, all due respect to the parties' statements on this issue, regardless of whether or not the settling parties actually "considered" those factors in reaching the settlement here, we don't think that they've made the necessary presentation that would enable this Court to make those findings. And specifically, we echo Bombardier's concerns in regards to the proportionality factor aspect when coming from the position of CALI, which is an alleged, I would say, we believe, an innocent bystander to much of the wrongs alleged here.

Whereas on the face of the trustee's complaint in the Jetcraft adversary itself, it makes clear that the very settling parties at issue here are amongst the parties that the trustee himself has contended committed the vast majority of

the underlying wrongdoing.

THE COURT: Thank you, Ms. Azlin.

Mr. Lyons, if you'd like to respond for a minute or two, you didn't use your whole time. And Ms. Azlin did go over a bit, although I didn't cut her off.

MR. LYONS: Yes, Your Honor.

Again, the proposed order that we're submitting is by the agreement of both Jetcraft and the trustee, subject, of course, to Your Honor's approval. And we believe that tracks the statute.

And I invite Mr. Ciatti to weigh in on that if he could take thirty seconds of that extra minute just to confirm that.

THE COURT: Certainly. Is there anything else, Mr. Lyons, though, because I'll then turn to your argument regarding Universal Leader?

MR. LYONS: Nothing further from me, Your Honor.

THE COURT: Okay. Mr. Ciatti, did you wish to be heard, just on that specific issue?

MR. CIATTI: Good morning, Your Honor. Michael Ciatti on behalf of the Jetcraft and FK defendants.

Just to confirm what we put in our consent that we would agree to the modification of the order as proposed by the trustee and consider that to be compliant with the settlement agreement that Ms. Azlin referred to.

THE COURT: Thank you, Mr. Ciatti.

All right. Mr. Lyons, turning to the issues raised by Universal Leader, if you'd please address those.

MR. LYONS: Yes, thank you, Your Honor. And I think these issues are fairly straightforward. I think we've discussed these issues about estate allocation in a lot of detail, and it certainly is going to come up in the cash-management -- or the cash-budget motion as well.

Your Honor, right now this is a lawsuit brought by both of the estates. Certainly, we are not in any way taking a position on ultimately whether the estate should be substantively consolidated. We settled both these claims. Ultimately, at the point in time when the trustee proposes a plan of liquidation or an interim distribution, the allocation issues will be then -- will then be relevant. And at that point, we may well decide to seek subsequent consolidation or some other allocation.

But right now, it's about bringing the money in the door is what the purpose of this settlement is. And ultimately, it's subject to every parties rights, including Mr. Bernstein's clients, to object to the ultimate disbursement and the allocation of how these proceeds should be, if they should be, distinguished between the estates. But it's just premature right now, Your Honor, and shouldn't in any way impede approval of the settlement.

THE COURT: Thank you, Mr. Lyons.

Mr. Bernstein.

MR. BERNSTEIN: Thank you, Your Honor. Again, for the record, Michael Bernstein of Arnold & Porter for Universal and Glove.

So as Mr. Lyons said and as Your Honor knows, our objection raised the issue of there being two separate bankruptcy estates in the absence of any evidence as to which of those two separate estates owns these claims and therefore should benefit from the settlement if it's approved. As the Court knows, the trustee has in some context in the past treated the estate as if they were one, as if they had been consolidated. And we have raised this issue before about there being two separate estates with separate assets and separate creditors.

With that said, I want to do two things here. One is respond briefly to the arguments that Mr. Lyons' made in his reply brief for today and then to offer a solution that would address at least a bar issue that the Court could consider.

So Mr. Lyons basically made -- the trustee basically made in his reply brief three arguments. One is he said that the Chapter 11 cash management order allows him to put all of the cash in one of the Chapter 7 debtors' estates. The second is he said both debtors owned Jetcraft clams. And third is he said, today and in his brief, that we can reallocate it

sometime down the road if necessary as between the two debtors.

So on the first issue, as this Court recognized when the trustee made almost exactly the same argument in the context of the fee-application objection, and Your Honor then took a recess to go review the Chapter 11 cash-management order, the trustee is simply wrong. The Chapter 11 cash-management order has no application to the issues in the Chapter 7 cases that we're dealing with now.

That order dealt with ordinary-course operational issues in the Chapter 11 cases. It authorized money to be taken from a DIP account, the DIP operating account, and put into two separate accounts, one for payroll and one for nonpayroll ordinary-course operating expenses. And then it dealt with compliance with various U.S. Trustee guidelines governing debtor-in-possession accounts. It certainly did not authorize a Chapter 7 trustee in future Chapter 7 cases, a trustee that didn't even exist in that capacity at that time, to comingle the assets of two separate Chapter 7 estates.

Second, with respect to Mr. Lyons' comments in his brief and today that both debtors own the Jetcraft claims because the trustee loosely referred to the debtors collectively in the adversary complaint without distinguishing between them, that's just not good enough. Determining which of the two estates owns the claims or whether both of them own them in some way requires evidence. Among other things, it

requires looking at the underlying transactions and the transaction documents that formed the basis for the Jetcraft claims to see what interest, if any, each of the two debtors might have in those claims.

And if the trustee continues to take the position that both of the debtors owned an interest in the claims, he needs to present evidence to substantiate that assertion, and he would need to propose an allocation as between the two, because, of course, even if both of them own the claims, that doesn't mean it's 50/50, and he would need to present evidence to demonstrate that his allocation is reflective of reality and not arbitrary because otherwise, you could give one estate and its creditors a windfall at the expense of the others. But of course, the trustee hasn't done any of this, and it's critical because there are separate estates with separate creditors, including our client.

Finally, the idea that we can figure this all down the road, the kick-the-can-down-the-road approach, doesn't work without some important protections, at least, because it is entirely possible that if Your Honor were at some point in the future to order a reallocation, the obligor estate, if you will, would not have sufficient resources to make the obligee estate whole. So it's not something we can kick down the road -- kick that down the road.

But that does lead me to a suggestion that Your Honor

might consider that would reconcile the trustee's desire to get some dollars in the door with our, I think, very legitimate concern that each of the respective estates and their creditors be treated fairly, and that is this. If the Court is inclined to approve the settlement, notwithstanding the other objections that have been raised, it could, and we respectfully submit should, include in the settlement order a provision that says these settlement proceeds will be held in a separate, segregated account and will not be spent on anything, on allowed administrative expenses or anything else, until such time as this Court has entered a final order, either substantively consolidating the estates or in the alternative, determining who owns these dollars.

That would have the effect of getting the dollars in the door as the trustee wants, but it would do so without prejudicing either estate and without prejudicing the creditors of a particular estate. Unless Your Honor has any questions about our position, that's all I have to say.

THE COURT: I do not. Thank you, Mr. Bernstein.

Mr. Lyons, is there anything you'd like to respond to regarding Mr. Bernstein's comments?

MR. LYONS: Your Honor, just very briefly, every dollar we spend is subject to Your Honor's approval. Any party can object. If there needs to be money spent, we're going to be talking about the budget motion. So everything is fully

transparent. We have a detailed listing of all of the expenditures.

Nothing in putting this these funds into a single account prejudices any creditors to the ultimate allocation of these resources. It is for administrative convenience. It was a single DIP account that was established for, really, administrative purposes. And certainly, the trustee's taken no position that this somehow results in a de facto substantive consolidation.

All parties will have an opportunity to look at post-allocation at the time when distributions are made, Your Honor. And so we have accounting and all the -- the main receipts, Your Honor, have been the adversary actions, and everybody that has full visibility, the debt structure, the coliability of the debtors under all these -- under all these different documents.

So it's something, Your Honor, that I think is not prejudicial in any way. And Your Honor, certainly nothing will be spent without Your Honor's approval.

THE COURT: All right. Thank you.

I want to take a look at a couple of things that were addressed in the argument. It's now about 10:20 here. We'll be in recess till 10:45. At that point, I will rule on this motion, and then I'll proceed with the other motions that are on calendar as well. So we'll be off the record for about twenty-five minutes until 10:45.

(Recess from 10:20 a.m., until 10:48 a.m.)

THE COURT: All right. Good morning, again. This is Judge Klein. We're back on the record in matter number 11 in the Zetta Jet case.

Just so everybody has the roadmap of how the rest of the day is going to go, I'll rule on the 9019 motion. That will probably take us right up to lunchtime on the West Coast. We'll take a lunchtime break. Then we'll all come back, and I'll address all of the other matters on calendar.

So as I mentioned, I wanted to look at a few things. The argument was very helpful. I appreciate hearing from both sides, and I'm ready to rule now on the 9019 motion.

So before the Court is a motion for order approving settlement agreement by and among the Chapter 7 trustee and the various Jetcraft entities and the various FK entities. In support of the motion, Jonathan King, the Chapter 7 trustee of Zetta Jet USA and Zetta Jet PTE, which we refer to as Zetta Singapore, filed a declaration.

On November 29th, retired bankruptcy Judge Kevin Gross, who mediated the dispute, filed a report. Bombardier and its related entities filed an opposition to the motion. CAVIC filed an opposition as well. And Universal Leader and Glove Assets filed a limited objection.

On January 11th, the trustee filed a reply in support of the motion, and the trustee also filed a mediator statement.

That was on January 11th. The FK defendants and the Jetcraft defendants filed a notice of consent to modify proposed order and joinder in reply.

The history of this case is well set out in the numerous written and oral rulings. Suffice it to say that Zetta USA and Zetta Singapore filed Chapter 11 petitions in 2017. Mr. King was appointed as the Chapter 11 trustee, and then after the cases were converted, he was appointed as the 7 trustee.

Jetcraft Corp. filed a 91,062.26 unsecured proof of claim in the Zetta Singapore case. On 9/13, the trustee filed an adversary complaint against Jetcraft and numerous other entities. There was a settlement with Element Aviation and ECN. There were two rounds of motions to dismiss. The most recent was motions to dismiss the first amended complaint, and that complaint was filed on January 28th, '21.

The Court granted Bombardier and its related entities' motion to dismiss the first amended complaint without leave to amend. The Court granted in part and denied in part the FK defendants' motion to dismiss the first amended complaint without leave to amend. And the Court granted in part and denied in part the Jetcraft entities' motion to dismiss the first amended complaint with prejudice.

On 9/7, the Court -- 9/7 of last year, the Court entered an order granting the Bombardier entities' motion for

entry of a final judgment.

Turning to the arguments, the trustee seeks approval of a settlement agreement with the FK and Jetcraft defendants, who I call the settling defendants, under 105 and FRBP 9019. According to the trustee, the settling defendants and he engaged in mediation conducted by retired Judge Gross, resulting in a settlement that provides the following.

The settling defendants will pay the trustee 9.5 million in two equal payments, the first within three business days after an order approving the motion becomes final and nonappealable, and the second, no later than July 10th of this year. If the settling defendants fail to make the second payment and fail to cure within thirty days, the trustee may either obtain a 4.75-million-dollar consent judgment and a one-million-dollar penalty plus interest, or retain the first installment and resume litigating against the settling defendants.

The second part of the settlement is that Jetcraft Corp. will withdraw its proof of claim, number 17.1.

The third provision, or third substantive part of the settlement, is within three business days after the trustee receives the second installment. He will dismiss all claims pending against the settling defendants.

Next, the trustee and the settling defendants will mutually release each other from all claims. Next, all parties

to the Chapter 7 case and all current or future defendants in the litigation will be barred, enjoined, and prohibited from seeking contribution or indemnity in any respect from the settling defendants. That's called the claims bar. If a nonsettling party violates the claims bar, the trustee will cooperate with the settling defendants to enforce the bar.

Finally, the trustee will file an approval order, which is defined as an order granting the motion that the trustee seeks from the Court, in a case that's currently pending in the Superior Court Province of Quebec, District of Montreal.

The trustee argues that in the Ninth Circuit, courts consider the following factors to determine whether to approve a settlement: The probability of success in litigation, expected difficulties, if any, in the matter of collection; the complexity, expenses, inconvenience and delay related to the litigation; and finally, the paramount interests of the creditors. The trustee contends that each of these factors weighs in favor of the Court granting the motion.

He expresses confidence that the adversary proceeding would be successful, however, due to the complexity of the issues involved, he concedes that success is uncertain. He highlights that the settling time-consuming and burdensome litigation is encouraged. He asserts that collecting a future judgment from the settling defendants would be challenging

because several of them are based in foreign countries, which would require the trustee to navigate foreign laws while incurring significant costs.

He argues that the complexity, expense, inconvenience and potential delay of continuing litigation all weigh heavily in favor of approving the settlement. He claims that the settlement agreement is in the paramount interest of creditors because it provides the maximum possible recovery in the shortest amount of time. According to the trustee, California law applies because the litigation was initiated, prosecuted, and ultimately settled in California concerning a California entity.

The trustee argues that a release given in good faith against one codefendant shall not discharge any other such party from liability unless its terms so provide, but it does discharge the party to whom it is given from all liability for any contribution to any other parties, citing Cal. Civil Procedure Code 866 and 877(b). He asserts that when a court determines a settlement was executed in good faith, other tortfeasors are barred from any future claims against the settling tortfeasor or coobligor for equitable comparative contribution or partial or comparative indemnity based on comparative negligence or comparative fault. The trustee contends that under California law, courts consider a number of factors to determine whether a settlement was executed in good

faith. I'll call those the good-faith factors, which are announced in Tech-Bilt, 38 Cal.3d 488, 1985.

He similarly asserts that the settlement agreement satisfies the good-faith factors because while the settling defendants liability exceeds the 9.5-million-dollar settlement, it is recognized that a settlor should pay less in a settlement than it would have if found liable after trial. The trustee acknowledges that it is uncertain whether he will be successful litigating claims against the settling defendants or the other defendants, and the amount of the settlement agreement is fair in light of the strengths and weaknesses of the trustee's claim, the expense and delay of litigation, and the risks attendant to all litigation. He concludes there's no collusion or fraud. The settlement agreement is the result of good-faith mediation.

Bombardier and its related entities argue that the motion and settlement agreement seeks relief beyond the scope of this Court's authority. BAC acknowledges that they do not take issue with a negotiated agreement between the trustee and the settling defendants, providing that the resolution is limited to the claims involving those parties only. They do, however, take issue with the overbroad, overreaching, and unsupportive relief required by the settlement agreement and sought by the motion.

BAC and related entities assert that the motion seeks

injunctive relief but bypasses FRBP 7001(7), which requires that injunctions be sought by complaint. BAC and the related entities note that courts have been near universal in reversing injunctions which have been issued without complying with Rule 7001. According to BAC, courts have likewise denied injunctive relief when embedded in settlement motions for failing to be brought via an adversary proceeding.

BAC argued that the trustee failed to provide Constitutionally-required notice to all parties, who he attempts to bind by the terms of the settlement agreement. They highlight that there were 459 proofs of claim filed in the Chapter 7 cases, but notice of the motion was only provided to about 100 entities, and providing notice calculated to reach potentially-affected parties is a fundamental tenet of due process, which has not occurred here.

They assert that the order limiting notice that was entered by the Court early in the Chapter 11 cases could not conceivably apply to a request to enjoin every party-in-interest in these cases, and it could not apply to any adversary proceeding where the FRBP-specific notice, summons, and service requirements are applicable. They contend that even if the Court were to address the merits of the motion, the claims bar, which is based on California law, cannot bind them or any nonparties to the settlement.

They contend that the claims bar cannot possibly apply

to them because they're not parties to the settlement agreement, did not participate in its negotiations, and did not agree to the California choice of law or inclusion of the claims bar. They argue that the trustee's reliance on Nucorp, a nonbankruptcy case which applied California's choice-of-law test to determine substantive law is misplaced because bankruptcy courts in the Ninth Circuit apply the Restatement (Second) of Conflicts of Law to determine substantive law.

They highlight that the settlement agreement involves the same tort claims that were alleged against them in the first amended complaint. They note that the Court previously rejected the trustee's argument that California law applies to these claims against BAC and its related entities, finding instead that based on the Zetta-BAC asset purchase agreements, New York law applied to all tort claims against BAC and its related entities.

They argue that the APA's broad choice-of-law provisions also encompass their contribution claims. They argue that in contrast to California law, New York law provides that when a joint tortfeasor settles, the plaintiff's claims against the nonsettling tortfeasors are reduced to the extent of any amount stipulated by the release or in the amount of the released tortfeasor's equitable share of the damages, whichever is greater.

BAC and its related entities contend that under New

York law, the trustee cannot recover from them more than their equitable share of damages because his claims will be reduced by the greater of Jetcraft and FK defendants' relative share of fault or amount paid. They argue that even if California law were to apply, the claims bar exceeds the scope of Cal. Civil Procedure Code 877 and 877.6. They highlight that the claims bar would bar, enjoin, restrain, and extinguish any claim they or any person has against the settling defendants, even claims not based on comparative fault.

They note that the trustee seeks a good-faith finding that purportedly satisfies the California contribution bar statute, but they claim that the trustee is overreaching, because 877 and 877.6 apply only to claims based on comparative contribution, comparative negligence, or comparative fault and concern only equitable indemnification, not contractual indemnification. BAC and its related entities assert that even if the relief requested were limited to what is authorized under California law, the motion does not support a good-faith finding because it does not establish that the settlement agreement accounts for the settling defendants' proportionate liability for the total amount of the trustee's approximate recovery.

According to BAC and its related entities, the trustee glosses over and misapplies the proportionality factor, which is one of the most important ways that a court determines good

faith. They contend that the Court cannot make a good-faith finding here because there's no substantial evidence to support a critical assumption as to the nature and extent of the settling defendants' proportional liability. And they assert that the trustee's apparent exclusive reliance on the November 29th mediators' report fails because Tech-Bilt requires more.

They contend that a bankruptcy court does not have jurisdiction to effectuate a claims bar regarding claims between nondebtor parties that do not affect the debtor's estate. The claims bar requested by the trustee exceeds this Court's jurisdiction, BAC and its related entities assert, because it bars all claims, including direct actions that cannot be estate property. They highlight that settlement agreements barring all actions exceed a bankruptcy court's related-to jurisdiction.

Finally, BAC and its related entities argue that the settlement agreement also would operate as a de facto third-party release, which is contrary to Ninth Circuit law. They contend that the Ninth Circuit historically and categorically has had that there is no authority to restrain third parties from pursuing independent claims like contribution, reimbursement, or contractual indemnity by nondebtors against other nondebtors. BAC and its related entities recognize that in Blixseth, the Ninth Circuit arguably narrowed the complete prohibition on third-party releases, but they assert that

neither of the conditions that led to that decision are present here.

BAC requests that the Court deny the motion in its entirety, or if the Court decides to reach the merits, to schedule a further evidentiary hearing to provide BAC and its related entities time to conduct discovery.

CAVIC adopts and incorporates by reference the BAC and its related entities' opposition. It also notes that the trustee seeks more than 200 million in damages from all defendants, but he has not and cannot show that the proportionate liability of the settling defendants is only 9.5 million, and nothing in the November 29th mediator's report provides a rough approximation of the trustee's total recovery and the settling defendants' proportionate liability.

Universal Leader and Glove note that in addition to the procedural and substantive objections raised by Bombardier and CAVIC, the trustee seeks approval of the settlement agreement on behalf of both the Zetta USA and Zetta Singapore estates, without identifying which estate owns the claims and causes of action being settled and without allocating the settlement or proceeds therefrom between each estate. They highlight that the trustee treats the two estates as if they have been substantively consolidated, but they have not.

Universal Leader and Glove conclude that the trustee must show which of those two estates owns the claims and causes

of action that he proposes to settle with competent evidence. And he must then ensure that the proceeds are deposited into that estate's account and used only for the benefit of that estate and its creditors.

In the reply, the trustee asserts that the relief requested in the motion is within the bounds of ordinary good-faith settlements. He argues that California courts routinely grant relief under Cal. Civil Procedure Code 877.6, discharging settling defendants from any liability for contribution or indemnity to any other alleged tortfeasor.

He refutes Bombardier's assertion that the claims bar is an injunction that requires the mechanism of an adversary proceeding. Instead, he contends that the claims bar seeks a statutory litigation bar under 877.6 as part of a settlement agreement, which is appropriately sought via a 9019 motion. To support his position that a separate adversary proceeding is unnecessary, he cites Hartog, a Southern District of Florida case, Land Resource, a Middle District of Florida case, Estate of Jackson, a Middle District of Florida case, Superior Homes, an Eleventh Circuit unpublished case, and In re: Munford, an Eleventh District published case.

The trustee notes that he is not seeking a finding that 105 provides a substantive basis for a bar order, but rather that it provides a procedural vehicle for applying 877.6 through a 9019 motion rather than an adversary proceeding. The

trustee acknowledges that a claims bar and an injunction both have the effect of precluding specified conduct, but he states they are different remedies governed by different procedures emanating from different sources of authority. He highlights that a California statutory bar is governed by the Tech-Bilt good-faith factors, and injunctions are governed by FRBP 65.

The trustee argues that the BAC's reliance on Zale Corp., a Fifth Circuit 1995 case, is misplaced because the injunction in Zale was based on FRCP 65, not a separate statute like 877.6. He contends that subsequent cases from within the Fifth Circuit have entered injunctions without requiring an adversary proceeding, citing Mirant, a 2005 Northern District of Texas case. According to the trustee, the FRBP 9019 standard is more exacting because the movant has the burden of proof, whereas under 877.6, the burden is on the challenger. Therefore, the trustee asserts, if a court approves a settlement under FRBP 9019, a good-faith finding under the less-stringent 877.6 standard flows.

The trustee argues that because BAC and the settling defendants are actively involved in the Jetcraft AP, there is no need to file an additional adversary proceeding. He recognizes BAC's concerns regarding a lack of notice to parties not served with a copy of the settlement agreement. He contends that this objection can be addressed by reducing the scope of the bar order to include only those parties served

with notice, as established by the trustee's certificate of service. The trustee proposes draft language addressing this issue and claims that with the revisions, no party will be subject to the bar order without first receiving notice.

Regarding the applicable law governing the settlement agreement, the trustee alleges that the Court has already determined that California law applies to the substantive claims against the settling defendants. California law also applies to indemnity contribution claims arising from those claims, and it's appropriate that they be afforded the protections of 877.6.

The trustee contends that he and the settling defendants appropriately chose California law to govern the settlement because the trustee's tort claims were initiated, prosecuted, and ultimately settled in California, and the claims concern a California entity, Zetta Jet USA. He discounts BAC's conclusory assertion that New York law would govern any potential contribution action, alleging that the Court ruled that New York law applied to the trustee's claims against BAC based on the APA's.

The trustee asserts that numerous courts have held that California law would apply to a contribution or indemnity claim arising out of California claims, similar to the claims asserted against the settling defendants. The trustee explains that the claims bar seeks nothing more than to have the

protections of 877.6 apply. But to the extent that a broader interpretation could be inferred from the order authorized in Allstate, that's 214 WL 12621185, District of Arizona, 2014, the modified proposed order has been reworked to clarify that it only applies to equitable comparative contribution or partial or comparative indemnity based on a comparative negligence or comparative fault, which resolves BAC's and its entities' concern about a more expansive interpretation.

The trustee maintains that the settlement agreement satisfies the Tech-Bilt good-faith factors. He rejects BAC's argument that there is not enough evidence to support such a finding. He asserts that a finding of good faith may be challenged only when the settlement is grossly disproportionate to what a reasonable person at the time of the settlement would estimate the settling parties' liability to be.

He argues that BAC places too much emphasis on the proportionate liability factor, and in fact, a court is not required to determine approximate liability with precision, but an educated guess is sufficient. He contends that BAC completely discounts the November 29th mediator's report and the January 11th mediator's statement.

The trustee highlights cases where courts have approved settlements with a significant discrepancy between the alleged damages and the settlement amount. The trustee contends that this Court has related-to jurisdiction to enter

the claims-bar order because in the Ninth Circuit, bankruptcy courts have jurisdiction over any matter that could have a conceivable impact on the estate. The trustee argues that the claims bar has a conceivable impact on the estate because the settlement agreement will provide significant funds to the estate.

He highlights Munford, an Eleventh Circuit case, and argues that the Eleventh Circuit found the nexus between the claims of the nonsettling defendants against the settling defendants was sufficiently close to the proposed settlement agreement to confer related-to jurisdiction on the bankruptcy court. The trustee contends that absent the prohibition against indemnity claims as provided under 877.6, the settling defendants would be unwilling to settle without holding back funds to defend against potential future claims, and the estate would be negatively affected by receiving less money.

The trustee argues that any of the BAC's barred claims against the settling defendants are inextricably intertwined with the claims the trustee asserts against the settling defendant. And he contends that as comparative claims, they were properly and automatically barred under California law if the Court makes a good-faith finding. The trustee contends that In re: Archer, a case from the Northern District of Ohio, supports his position rather than BAC's because it involved a bar order that enjoined any person from future claims, versus a

claims bar applicable only to nonsettling defendants, which is at issue here.

The trustee disputes BAC's assertion that the claims bar is the functional equivalent of a third-party release. He contends that the authority for the claims bar rests in Cal. Civil Procedure Code 877.6, nor in 524 of the Bankruptcy Code. He asserts that BAC is blurring the lines between a prohibited all-persons third-party release and a statutory contribution order of the type approved by courts in Munford and Hartog.

The trustee contends that CAVIC's opposition should be overruled, and Universal Leader-Gloves' opposition is without merit.

Turning to the legal standard, FRBP 9019 provides that on motion by a trustee and after notice in a hearing, the Court may approve a compromise or a settlement. A bankruptcy court has great latitude in approving compromise agreements. The Court's discretion, however, is not unlimited. A bankruptcy court should approve a settlement if it was the result of good-faith negotiations and is fair and equitable. That's In re: a C Properties, 784 F.2d 1377 (9th Cir. 1986).

When determining whether a proposed settlement agreement is fair and equitable, courts must consider, one, the probability of success in the litigation, two, the difficulties, if any, to be encountered in the matter of collection, three, the complexity of the litigation involved

and the expense, inconvenience, and delay necessarily attending it, and four, the paramount interests of the creditors and a proper deference to their reasonable views in the premises. The trustee has the burden of demonstrating that the compromise is fair and equitable and should be approved.

A settlement may be approved if it is fair and equitable when comparing the claims being compromised against the likely rewards of litigation. Further, when assessing a compromise, courts need not rule upon the disputed facts and questions of law, but rather must only canvass the issues. When analyzing proposed settlement, the Court should not substitute its judgment for that of the trustee. Instead, the Court must determine whether the settlement falls below the lowest point in the range of reasonableness.

While the Court should consider the reasonable view of creditors, objections do not rule. It is well-established that compromises are favored in bankruptcy. As noted by the Supreme Court in administering reorganization proceedings in an economical and practical manner will often be wise to arrange the settlement of claims as to which there are substantial and reasonable doubts.

In terms of the analysis, the first issue the Court will address is whether or not the settlement agreement can be approved via 9019 motion or required a separate adversary. In the motion, the trustee did not address FRBP 7001's requirement

or whether the relief requested can be obtained via motion or requires an adversary proceeding.

In the opposition, BAC assert that FRBP 7001(7) mandates that injunctive relief be sought via complaint, a requirement the trustee cannot avoid by embedding the relief in a 9019 motion. They contend that courts have denied injunctive relief included in settlement agreements due to a failure to satisfy Rule 7001's procedural requirements. BAC state that the trustee's attempt to obtain an injunction by filing a motion rather than initiating an adversary proceeding is a fatal flaw that precludes the Court from granting the relief requested.

In the reply, the trustee argues that the Court can grant the requested relief without a separate adversary proceeding because he is not seeking an FRCP 65 injunction under the Court's equitable powers to maintain the status quo pending the outcome of a new legal dispute. Rather, he claims he is seeking an order approving a statutory bar against contribution and indemnity claims by joint tortfeasors as part of a settlement agreement under FRBP 9019.

He asserts that BAC's arguments regarding FRBP 7001(7) do not account for the specific context of a bar order included in a 9019 motion, and he advances four reasons why Rule 7001(7) is inapplicable. One, Courts have entered settlement bar provisions in 9019 settlements under FRBP 7016(c)(2), 11 U.S.C.

105, and the All Writs Act. Two, approval under FRBP 9019 is effectively a finding that Cal. Civil Procedure Code 877.6 applies. Three, the due process rights of BAC or other nonsettling parties will not be affected. And four, an adversary proceeding already exists. The trustee argues that the modified bar order should extinguish BAC's notice concerns.

As an initial matter, because the trustee did not address whether a 9019 motion or an adversary proceeding was required in the motion, the Court need not consider any authority or argument the trustee advanced in the reply. It is well-established in the Ninth Circuit that issues cannot be raised for the first time in reply briefs. The Local Bankruptcy Rules in this district also provide that new arguments or matters raised for the first time in reply documents will not be considered.

Although the trustee may contend -- and he didn't in his reply, but he could contend that he was only responding to BAC's arguments in the opposition, the Court would not find that persuasive. The trustee and trustee's counsel are sophisticated and certainly knew that whether the requested relief could be obtained via motion rather than an adversary proceeding would be an issue that would be raised. Rather than addressing the issue in the motion, they chose to sit back and wait to provide authority and analysis in the reply, to which BAC had no opportunity to respond.

Even if that were not the case, and even if the Court considered, and it did consider, the argument and authority the trustee provided in the reply, it would not make a difference. The Court finds the trustee's reliance on five cases from within the Eleventh Circuit are not persuasive. Two of those cases are from the circuit itself. One is Munford from 1996, and one is Superior Homes, an unpublished decision. Neither of those cases, however, addressed or even mentioned whether an adversary proceeding was necessary for imposition of a bar order.

In Munford, Munford, Inc. filed bankruptcy after a failed leveraged buyout and then filed an adversary proceeding seeking avoidance and recovery of transfers from numerous defendants, including VRC. VRC offered to settle the adversary proceeding claims for 350,000 of its 400,000 liability insurance policy. Conditions on the bankruptcy court enjoining the nonsettling defendants from seeking contribution from VRC or its insurer. The bankruptcy court approved the settlement agreement, permanently enjoining the nonsettling defendants from asserting contribution and indemnity claims against VRC under 105 and FRCP 16.

The nonsettling defendants appealed, and the Eleventh Circuit first addressed whether the bankruptcy court had subject-matter jurisdiction over nonsettling defendants' unasserted state law contributions and indemnity claims, and it

determined that the bankruptcy court did. It next focused on 105 and FRCP 16, concluding that 105 and FRCP 16 authorize the bankruptcy court to enter bar orders where such orders are integral to settlement in an adversary proceeding.

In Superior Homes, an unpublished decision, the Eleventh Circuit was confronted with whether the bankruptcy court had subject-matter jurisdiction over state-court litigation involving nondebtor defendants. Citing Munford, the court noted that bankruptcy-court jurisdiction extends to disputes between third parties in litigation and empowered the bankruptcy court to bar litigation via a 9019 compromise.

In one of the district court cases the trustee cites from within the Eleventh Circuit, Land Resources, Land Resources and its affiliates filed Chapter 11 cases that were converted to Chapter 7 and jointly administered. The Chapter 7 trustee, Meininger, filed several actions against Robert Ward, the CEO of Land Resources, his family members, and an indemnitor of certain bonds issued on behalf of Land Resources in state and federal court seeking to avoid fraudulent transfers. Meininger also filed a claim on behalf of the debtors in a probate action involving Ward's deceased wife.

Bond Safeguard Insurance and Lexon Insurance companies, the insurers who had issued bonds on behalf of Land Resources and its subsidiaries, filed two separate actions in district court. Other actions including a writ of attachment

and garnishment actions were filed in Georgia and Florida state court. The trustee also filed an adversary proceeding against the debtors' joint-venture partners, including Realan Investment Partners and Weeks-Grey Rock, who had allegedly been beneficiaries of fraudulent transfers while the debtors were insolvent. That was called the Euram litigation.

The trustee eventually settled with the Ward parties for 925,000 dollars in exchange for, among other things, the trustee's voluntary dismissal or withdrawal of the debtors' claims in the probate action and the adversary proceedings. The trustee filed a 9019 motion seeking a bar order permanently enjoining the trustee and debtors' creditors from pursuing any actions against the Ward parties arising from, related to, or based upon or deriving from the debtors' business activities.

Separately, the trustee filed a 9019 motion seeking approval of an agreement with the insurers through which they agreed to fund all professional fees and costs up to 750,000 dollars associated or related to the trustee's prosecution of the Euram litigation, and in return, the insurers would receive a specific portion of any award or a settlement achieved in that case. According to the trustee, the two settlement agreements would result in about fifty million reduction in the insurers' allowed claims and reclassification from administrative to general unsecured.

Realan and Weeks-Grey objected to the trustee's 9019

motion regarding the settlement with the Ward party, arguing, among other things, that a bar order could only be entered in an adversary proceeding. The bankruptcy court overruled the objection and approved the settlement.

Realan and Weeks-Grey appealed. The district court affirmed, focusing primarily on the bankruptcy court's Constitutional authority to approve the Ward's settlement agreement, which contained the bar order, as well as its subject-matter jurisdiction to approve the bar order. In a footnote, the district court stated that the Eleventh Circuit had upheld bankruptcy courts' approval of bar orders in conjunction with a 9019 motion rather than an adversary proceeding, citing Superior Court (sic). But as noted, the issue of whether an adversary proceeding was necessary was not raised or addressed in Superior Home.

In Estate of Jackson, that involved a complex, eleven-year litigation, and the bankruptcy court was confronted with whether to approve two settlements, which would bring approximately twenty million into the bankruptcy estate. The litigation emanated from six wrongful-death lawsuits filed by probate estates against THMI, debtor's wholly-owned subsidiary and THMI's former corporate parent. The settlements were conditioned on the court entering a bar order barring the nonsettling defendants, who prevailed, after dismissal, summary judgment, or trial from suing the settling defendants for

indemnification contribution or other claims.

The nonsettling defendants objected to the settlements, particularly the bar order. Addressing the issue that is currently before this Court, the bankruptcy court stated that the Eleventh Circuit had expressly held that 105 "is ample authority for entry of a bar order". In response to the nonsettling defendants' argument that their request for a permanent injunction was not procedurally proper because a separate adversary had not been filed, the Court noted that in addition to 105, the Eleventh Circuit has recognized that the All Writ Act codifies the long-recognized power of courts of equity to effectuate their decrees by injunctions or writs of assistance.

Finally, in Hartog, Exporther Bonded Corporation, EBC, filed a Chapter 11 in the United States through the Alcohol and Tobacco Tax and Trade Bureau held a 1.7-million-dollar allowed claim against the estate. Pre-petition Rivero Investment Group bought real property from which the debtor operated. Continental Duty Free operated from the same location. Three persons named Rivero owned and controlled both entities.

The debtor funded about 217,000 dollars of the real property's deposit, and the Riveros and Continental contributed about 650,000 dollars. RIG rented the property to the debtor and Continental. During the bankruptcy case, the property was sold, resulting in four million in proceeds. As of the

petition date, RIG owed the debtor about 890,000 dollars. About a year after the case was filed, it was converted to 7, and Hartog was appointed as the Chapter 7 trustee. He informally asserted various claims against Continental and RIG, eventually entering into a pre-suit settlement, providing that Continental and RIG would pay 965,000 dollars to the estate.

The settlement was contingent on entry of a bar order enjoining creditors from pursuing the settling parties or their properties arising out of or related to any of the facts, occurrences, or transactions alleged, or which could have been alleged, by the trustee that arise out of or relate in any way to the debtor, the bankruptcy case, or any claims available to the debtor's bankruptcy case. The trustee filed a 9019 motion, and the ATT objected because it wanted to pursue claims against RIG and Continental to collect the full tax owed by the debtor based on the sale of the real property. ATT conceded that its claims belong to the bankruptcy estate. The bankruptcy court approved the settlement and bar order.

One of the issues that ATT raised on appeal was that the bankruptcy court erred in issuing an injunction outside of an adversary proceeding. Citing Superior Homes, Land Resources, and relying on 105, FRCP 16, and the All Writs Act, the district court held that an adversary proceeding was not necessary. The court discounted ATT's reliance on Zale, a Fifth Circuit case from 1995, and that court's holding that an

adversary proceeding was required to enjoin third-party claims based on what the Court described as "binding Eleventh Circuit precedent".

The Court does not find the cases from within the Eleventh Circuit persuasive for a number of reasons. First, a careful reading of the two Eleventh Circuit cases the trustee cites reveals that the Eleventh Circuit was not confronted with and did not address whether an adversary proceeding was required to issue an injunction or a bar order. Second, the bankruptcy and district court from within the Eleventh Circuit relied on 105, FRCP 16, and the All Writs Act to find that adversary proceedings were not required, which this Court does not find compelling.

First, in Law v. Siegel, the Supreme Court held that bankruptcy courts cannot use 105 to override other sections of the Bankruptcy Code. In the Ninth Circuit, this has been extended to the FRBP. That's Anwar versus Johnson, 720 F.3d 1183 (9th Cir. 2013). And in that case, the Ninth Circuit held that bankruptcy courts may only exercise their equitable powers within the confines of the Bankruptcy Code, which includes deadlines set by the FRBP, because granting retroactive extension of a deadline would conflict with the plain language of FRBP 4007 and 9006. The Court could not rely on equitable powers under 105 to do so.

Although the trustee asserts that he is not seeking a

finding that 105 provides a substantive basis for a bar order, but rather that it provides a procedural vehicle for applying 877.6 via a 9019 motion, the Court does not find this argument compelling. He cites no authority for this distinction, and the Court was able to locate any. Additionally, based on the Court's reading of Anwar, the Ninth Circuit would disagree with the trustee's assertion.

Second, although the courts in Fundamental Long Term care and Hartog based their authority to issue the bar order, at least in part on the All Writs Acts, the Ninth Circuit has not yet determined whether bankruptcy courts fall within the scope of the All Writs Act.

Third, FRCP generally governs pre-trial procedures, including conferences, scheduling, and management. In contrast, FRBP 7001(7) is much more specific and provides that a proceeding to obtain injunctive or other equitable relief must be sought via adversary proceeding. A general rule of statutory construction is that the specific governs over the general.

In contrast to the Eleventh Circuit cases cited by the trustee, the Fifth Circuit has directly addressed the issue of whether an injunction can be sought via motion. In Zale, after Zale Corporation and its affiliates filed Chapter 11, the official creditors' committees began investigating claims against Zale's former directors. Those were Gerstein, Gill,

Gillies, and Feld and others.

Under the threat of litigation, the directors began negotiations and settlement discussions with the creditor committees. The negotiations included discussions regarding Zale's D&O liability policy. Cigna Insurance had issued a ten-million-dollar primary policy, National Union Fire had issued an excess policy up to fifteen million, and there was another ten million policy that covered Gerstein, Gill, and Gillies.

Zale and Gerstein, Gill, and Gillies on one side and Cigna on the other filed a motion seeking approval of a settlement agreement. The settlement indicated that Gerstein, Gill, and Gillies would agree to a thirty-two-million-dollar judgment against them to be paid out of insurance proceeds, and they were to sign to Zale all rights under the policy. Included in the agreement was a provision that conditioned the settlement on the grant of a permanent injunction, preventing parties from suing the settling parties for their actions in reaching the settlement or from otherwise seeking to collaterally attack the settlement agreement.

The purported reason for the injunction was to prevent NUFIC, who is National Union Fire Insurance Company, and Feld, the director excluded from the agreement, from bringing claims against Cigna. There was also a provision under which Zale agreed to indemnify Cigna for bad faith or other claims against it, regardless of the settlement.

The bankruptcy court approved the settlement motion over the objection of NUFIC and Feld. They appealed, arguing that the injunction deprive them of rights, which the Court could not do because neither NUFIC nor Feld were parties to the agreement. The district court affirmed.

NUFIC and Feld appealed to the Fifth Circuit, arguing, among other things, that the bankruptcy court erred in granting the injunction without conducting a full adversary proceeding. The Fifth Circuit noted that Cigna and Zale had not filed a complaint to determine injunctive relief, but instead simply added the injunction to the settlement agreement. The Fifth Circuit stated that "including a matter governed by Rule 7001 in another matter already before the court does not satisfy the Procedural Rules required by Rule 7001."

The Fifth Circuit concluded that Cigna and Zale failed to initiate properly their request for injunctive relief, and the Fifth Circuit reversed the district court's order approving the settlement, vacated the settlement, and remanded to the district court.

The Court finds that the Fifth Circuit's analysis in Zale is compelling and more persuasive than the Eleventh Circuit cases the trustee relies on, which contain no discussion or analysis of whether an adversary or a 9019 motion was required. Although in the reply, the trustee claims that after Zale, courts within the Fifth Circuit have entered

injunctions and not required adversary proceedings, this argument requires little analysis.

In the case cited by the trustee, Mirant, debtor sought district-court approval of a settlement agreement and 363 sale between Mirant and settling parties. The settlement agreement provided that after the settlement, all parties holding interests against or in the debtor or other transferred assets would be barred from asserting that the persons or entities' interests against the party acquiring the transferred assets.

Mirant is inapposite. First, it contained no discussion or analysis of whether an adversary proceeding was required. Further, it involved a 9019 motion as part of a sale motion, rather than a bar against nonsettling defendants from seeking indemnity or contribution, which is the issue here.

The trustee contends that he's seeking a bar order and not an injunction, and therefore he can contends that FRBP 7001 is inapplicable. The Court disagrees. The difference between a bar order and an injunction is a matter of semantics. Black's Law Dictionary defines a bar as to prevent or prohibit and an injunction as a court order preventing an action.

The trustee also seems to argue that FRBP 7001(7) is limited to injunctions brought under FRBP, but the plain language of FRBP 7001(7) is not that narrow. If Congress had meant to limit the reach of FRBP 7001(7) to apply only to

injunctions brought under FRBP 7065, it would have said so.

The Court recognizes that the standard for making a good-faith finding under 877.6, which the trustee describes as a bar order, and an injunction are different. However, the end result, which is the issue here, is the same. One party, in this case, BAC, CAVIC, and Universal Leader, Glove Assets would be enjoined from any and all claims in any state or federal jurisdiction or any other forum or tribunal against the settling defendants or for equitable comparative contribution or partial or comparative indemnity based on comparative negligence or comparative fault.

And that portion that I just mentioned has been described as a modified bar order, but the Court notes that there is no modified bar order on the docket. It is a statement in the trustee's reply about how the bar order would be modified.

Finally, as stated succinctly by the Ninth Circuit in the context of a sale motion, "Bankruptcy Rule 7001 designates ten categories of proceedings as adversary proceedings. The trustee may obtain the authority he seeks only through an adversary proceeding. The bankruptcy court's equitable powers do not allow it to derogate from Rule 7001". And that's In re: Lyons, 995 F.2d 923 (9th Cir. 1993).

Because the motion is not the proper procedural mechanism in which to seek a bar order, the Court could deny

the motion on that basis alone. But even if that were not the case, the motion must still be denied for the following substantive reasons.

First, which law applies to the settlement agreement. In a footnote in the motion, the trustee summarily states that California law applies. That's footnote 3 in the motion.

In the opposition, BAC and its related entities argue that the Court rejected the trustee's position that California law applies to the tort claims against them, instead finding that New York law applied to those claims when it dismissed with prejudice the FAC against BAC.

BAC highlight that the Court found that the choice of law provisions in the Zetta BAC APAs were broad, governing both the routine aspects of a contractual relationship as well as any related claims arising under common law or statute, including claim sounding and torts. BAC assert that New York law applies with equal force to any potential contribution or indemnification liability that BAC may face.

In the reply, the trustee argues that because California law governs the tort claims against the settling defendants, it should also govern the settlement agreement. He highlights that the claims against the settling defendants were initiated, prosecuted, and ultimately settled in California, and they concern a California entity, Zetta Jet USA. The trustee posits that the only reason New York law governed the

BAC claims was the choice of law provision in the Zetta and BAC APAs and the choice of law provision that the trustee and the settling defendants included in the settlement agreements specify that California law applies.

The trustee did not fully address the issue of what law applied in the motion. In fact, the trustee's position that California law applied was mentioned in passing in a three-sentence footnote -- excuse me, in a three-line footnote. It was not until the reply that the trustee explained why he believed that California law applied and cited a few cases, in addition to Nucorp, which was mentioned in the motion to support his position that California law applies.

Therefore, as previously noted, the Court need not consider the argument or citations the trustee advanced for the first time in the reply regarding the applicable law. Even if that were not the case and the trustee -- and the Court did consider the argument and the authority the trustee cites in the reply, the Court finds that the trustee's position is not well taken. In the reply, the trustee cites Nucorp, Commercial Union, and Chen. The first two cases are district court cases, and the third one is from the California Supreme Court.

Nucorp involved securities litigation stemming from the sale of Nucorp securities. The plaintiffs engaged in intensive settlement negotiations, resulting in the plaintiffs and certain defendants, primarily Nucorp's officers and

directors, executing a forty-one-million-dollar settlement. The settlement provided that it was made in good faith under 877 and 877.6, and all claims for contribution or indemnification against the settling defendants arising under federal securities law or state law in favor of any person asserted to be a joint tortfeasor were extinguished, discharged, satisfied, and/or otherwise unenforceable.

After a hearing, the magistrate judge found that the settlement was executed in good faith. Four of the nonsettling defendants sought de novo review from the district court of the good-faith finding and the order barring indemnification and contribution. The nonsettling defendants argued that if they were found liable as joint tortfeasors with the settling defendants under the pendent state law claims, they would have state law contribution and indemnification causes of action.

Two of the nonsettling defendants allege that California law didn't apply to the contribution and indemnification claims, which they claim should be governed by Texas and New York law. The court disagreed, noting that federal courts exercising pendent jurisdiction must apply the choice of law and rules of the state in which it sits. It indicated that California courts apply the governmental interest analysis to resolve choice-of-law problems.

According to the court, although Texas and New York had some interest in the litigation, one of the nonsettling

defendants was headquartered in New York and another was incorporated in Texas, the settlement was negotiated and executed in California, a partially-terminated multidistrict litigation that was initiated and consolidated in California, and the litigation involved a corporation whose chief operation during the alleged fraud was in San Diego. Therefore, the court held that California law applied.

Similarly in Commercial Union, John Meyers sued Haberfelde, Ford, and Ford Motor Company for injuries he incurred in an automobile accident rendering him a quadriplegic. In a tactical maneuver on the eve of trial, he dismissed Ford from the suit, and the trial proceeded against Haberfelde, with the jury rendering a verdict of 3.25 million. Before and during the trial, Meyers offered to settle, first for 150,000 and then for 350. Commercial Union, Haberfelde's insurer, refused both settlement offers.

After trial, Commercial settled the case for 2.875. Commercial then sued Ford for partial indemnity regarding that payment. Although Ford contended that Washington or Oregon law controlled the question of indemnity, the court noted that California had an interest in applying the indemnity law. Because Haberfelde was a California resident, the underlying personal injury action was tried in a California court, and Haberfelde's negligence in repairing the car, which was the basis for the judgment against it, occurred in California.

Finally, the trustee cites Chen, a state court case involving a lawsuit that was filed after a fatal bus crash, which potentially implicated four jurisdictions, Indiana, Arizona, California, and China. The trial court determined that the governmental interest test required application of Indiana law. Before trial, the plaintiff settled and dismissed the Indiana defendant from the action. The issue before the appellate court was whether after dismissal of the Indiana defendant, the trial court was required to reconsider its prior choice-of-law ruling. The court of appeals answered that question no.

In contrast to Nucorp, this case does not involve pendent jurisdiction over the claims the trustee seeks to settle. Further, unlike Commercial Union, a case in which subject-matter jurisdiction was based on diversity, here, the Court has original jurisdiction over the Jetcraft adversary proceeding claims.

And Chen is inapposite. It was a state court case where the court utilized the governmental interest test to determine applicable state law. In contrast, in bankruptcy cases, as the trustee has acknowledged, under binding Ninth Circuit precedent, courts utilized the Restatement (Second) Conflicts of Law to determine the applicable law. The trustee acknowledged this in the opposition to BAC and its related entities' motion to dismiss. That was filed on January 14,

'22. That's docket number 349.

Although the trustee cites In re: Allstate, a District of Arizona decision, in both the motion and reply, his reliance on that case is not persuasive. There, an Arizona district court approved an unopposed settlement agreement which contained a bar order, which was issued with a settlement agreement in a consolidated securities-fraud action.

The problem for the trustee is the order he -- is that in that order which he cites, it does not contain any information regarding the evidence substantiating the court's good-faith finding. Without more, it merely indicates that based on facts in that case, which are impossible to discern from the order, the Court found that contribution and indemnification claims under Federal Securities Law, Arizona statutes and Cal. Civil Procedure Code 877 were barred.

Further, the trustee asserts that the tort claims that are at issue in the settlement agreement were initiated, prosecuted, and ultimately settled in California concerning a California entity. That argument is unavailing. It is true that the Jetcraft AP was filed in California, but there's no evidence before the Court that this settlement occurred in California. It is beyond dispute that the trustee and trustee's lead counsel are in Chicago, and all litigation appears to be directed from there.

Retired Judge Gross, who mediated the case, is located

in Delaware. Lead counsel for the FK defendants and Jetcraft defendants are located in Washington, D.C. Fazal-Karim is a resident of Dubai. And Jetcraft Corp. is a Delaware corporation with a principal place of business in North Carolina. Jetcraft Global and Jetcraft Asia are British Virgin Islands corporations with their principal place of business in North Carolina. Jetcoast is a Delaware corporation with a North Carolina mailing address.

And the trustee's assertion that the settlement involved a California entity, Zetta USA is only minimally correct. The trustee is leaving out the fact that he is a trustee for two separate debtors, Zetta Singapore and Zetta USA. Each debtor filed its own case, and the cases have not been consolidated. And it is clear from the FAAC's allegations regarding the tort claims that Zetta Singapore, not Zetta USA, executed each of the APAs that are at issue in the tort claims.

The FAAC indicates that Zetta USA operated the planes under its Part 135 certificates, which were required to comply with FAA regulations, and Zetta USA also guaranteed the aircraft financing. But it's undisputed that Zetta USA did not execute the APAs or enter into any agreements to buy more aircraft that were at issue in the tort claims.

As the Court noted when ruling on the FK and related entities' motion to dismiss, this is docket 384, "central to the allegation supporting the tort claims", those are counts I,

II, III, VI, and VII, "is that the FK defendants, Jetcraft, and BAC (indiscernible) paid Cassidy two 500,000-dollar bribes, provided him with Formula One tickets, and promised him sea dues to cause the debtor to enter transactions and take delivery of overpriced aircraft.

In the ruling on the FK defendant's motion to dismiss the first amended complaint, the Court addressed a similar argument that the trustee advances here regarding conduct occurring in California. In the context of ruling on Count III, the California unfair competition claim, the Court determined there were insufficient allegations to support a California nexus because Zetta Singapore executed Plane 1 and 10's APAs, not Zetta USA, which obligated Zetta Singapore to pay for those aircraft.

The Court also considered and rejected the trustee's position that the debtors' primary base of operation was California because the trustee argued that the debtors' key personnel were located here, and they operated revenue-generating flights in California.

Although Seagrim and Walter, directors of both Zetta Singapore and Zetta USA were located in Burbank, Zetta Singapore bought the aircrafts and the transactions did not close in California and the kickbacks and sea due credit against the Nyota were not authorized or received in California. The law of the case doctrine and prohibits this

Court from considering again whether the debtors' primary base of operation was in California.

It is true that when ruling on the motion to dismiss the first amended complaint, the Court applied California law to the tort claims against the FK defendants. But contrary to the trustee's assertion, the Court made no findings that the torts the trustee seeks to settle actually occurred in California. In fact, as noted, the Court found to the contrary.

The trustee, who has burden on a 9019 motion, has not analyzed or provided any authority that the Restatement (Second) Conflict of Law would require the Court to apply California law to the settlement agreement. Therefore, the Court finds the trustee has not met his burden of demonstrating that California law applies to the settlement. Even if, however, the trustee had presented sufficient evidence, argument, and analysis substantiating his assertion that California law applied to the settlement agreement, it would not matter because as the Court will analyze, there is insufficient evidence from which the Court can make a good-faith finding under Tech-Bilt.

In the motion, the trustee argues that the settlement agreement satisfies the relevant Tech-Bilt good-faith factors. Although the trustee acknowledges that the settling defendants' liability exceeds the 9.5-million-dollar settlement amount, he

reasons that it is recognized that a settlor should pay less than it would if found liable after trial.

The trustee contends that a settlor -- the trustee contends that the likelihood of success if the claims were litigated is uncertain and the settlement amount is fair in light of the strengths and weaknesses of the trustee's claims and the expense, delay, and risk inherent in litigation. The trustee explains that there is no evidence of fraud or collusion that would injure the nonsettling parties and the settlement agreement resulted from good-faith mediation.

BAC and its related entities respond that the trustee cannot satisfy the good-faith factors. They assert that California courts have consistently held that a settling defendants' proportional liability is one of the most important factors, and courts regularly deny settlement when the moving party fails to demonstrate that its settling parties' liability for the plaintiff's approximate recovery is roughly consistent with the amount being paid in settlement.

BAC highlight that the trustee's position that the settling defendants' liability exceeds the settlement amount falls short of what is required. They argue that relying on mediation and the November 29th mediator's report to demonstrate good faith is insufficient for the Court to make a good-faith finding, which would require a full evidentiary hearing based on a developed record in accordance with 877.6.

In the reply, the trustee reiterates that he has satisfied the good-faith factors and asserts that BAC's focus on proportionate liability is misplaced. He argues that the party asserting lack of good faith has the burden of proof, which can only be met if they showed that the settlement is so far out of the ballpark of good faith that the settlement is inconsistent with the equitable objectives of the statute. The trustee contends that good faith may be challenged only when the settlement is grossly disproportionate to what a reasonable person at the time of the settlement was estimate the settling parties' liability to be. He asserts that a court is not required to determine approximate liability with precision, but an educated guess will suffice.

Cal. Civil Procedure Code 877 provides where a release, dismissal with or without prejudice, or a covenant not to sue is given in good faith before a verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort, or to one or more coobligors mutually subject to contribution rights, it shall have the following effect: A, it shall not discharge any other such party from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal, or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and B, it shall discharge the party to whom it is given from all

liability for any contribution to any other party.

Cal. Civil Procedure Code 877.6 is titled "Determination of good faith of settlement with one or more tortfeasors or obligors". Section (a)(2) provides, "a settling party may give notice of settlement to all parties and to the court, together with an application for determination of good-faith settlement and a proposed order. The application shall indicate the settling parties, and the basis, terms, and amount of the settlement."

(b), "The issue of good faith of a settlement may be determined by the party (sic) on the basis of affidavits served with the notice of hearing, and any counter-affidavits filed in response, or the court may, in its discretion, receive other evidence in the hearing."

(c), "A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or coobligor from any further claims against the settling tortfeasor coobligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

"The party asserting lack of good faith shall have the burden of proof on the issue."

According to the California Supreme Court in assessing whether a settlement is made in good faith, courts examine whether the amount of the settlement is within the reasonable

range of the settling tortfeasor's proportional share of comparative liability for the plaintiff's injury. That's from Tech-Bilt. Factors that the courts consider, and these are called the good-faith factors:

A rough approximation of plaintiff's total recovery and the settlor's proportionate liability; two, the amount paid in the settlement; three, the allocation of settlement proceeds among plaintiffs; four, a recognition that a settlor should pay less in settlement than it would if it were found liable after trial; five, the financial conditions and insurance policy limits of settling defendants; six, the existence of collusion, fraud, or tortious conduct aimed to injure the nonsettling defendants' interests.

According to the California Supreme Court, 877.6 requires courts to review agreements "to ensure that such settlements approximately balance the contribution statute's dual objectives, which are equal sharing of costs among parties at fault and encouragement of settlement. Determining whether a settlement is in good faith is a matter left to the sound discretion of the trial court." That's Navarro, 2018 WL 6242155, Central District California, 2018.

If the issue of good faith is contested, there must be a sufficient showing of all Tech-Bilt factors, either in the original moving papers or in counter declarations. That's Navarro at *4. One of the most important factors is the

settling parties' proportionate liability. That's Toyota Motor Sales, 220 Cal.App.3d 864, 1990.

As the court in Tech-Bilt noted, the question is whether the settlement presents a good-faith determination of the defendant's relative liabilities. If there is no substantial evidence to support a critical assumption as to the nature and extent of a settling defendant's liability, then a determination of good faith is an abuse of discretion. Toyota, 200 Cal.App.3d at 871.

A party asserting a lack of good faith who has the burden of proof on that issue should be allowed to present evidence demonstrating that the settlement is so out of the ballpark to be inconsistent with the equitable objectives of 877.6. Tech-Bilt.

Both the trustee and BAC cite and rely on Zahnleuter -- I'm not saying that correctly; it's 2021 WL 4975392 -- to support their respective positions. In that case, the district court was confronted with whether to approve a settlement agreement under 877.6. Katherine Zahnleuter alleged that her sister, Amy Mueller, conspired with an attorney, Gabriel Lenhart and his firm, collectively called Lenhart, to fraudulently amend a family trust.

Zahnleuter asserted that the fraudulent amendment forced her to seek costly relief in a state court case which ended abruptly during trial when evidence of the fraud came to

light. Zahnleuter sued in federal court, seeking damages for attorneys' fees and other expenses she incurred in the state court litigation.

Lenhart and Zahnleuter then reached a settlement agreement. Lenhart would pay 105,000 to Zahnleuter in exchange for her release of all claims against him. Lenhart submitted two declarations from the attorney who represented him and (indiscernible) finding from the Court that the settlement complied with 877.6 good-faith requirements.

After citing the Tech-Bilt factors, the court noted that there needed to be some evidentiary basis for evaluating the proportionate liability and total approximate recovery. According to the court, proportionate liability is one of the most important factors a court must examine when determining a settlement has been made in good faith under 877.6. And if there is not substantial evidence to support a critical assumption as to the nature and extent of a settling defendant's liability, then a determination of good faith based on some such assumption is an abuse of discretion. That's Zahnleuter citing Toyota Motors.

The court in Zahnleuter indicated that based on the record, it could not determine whether the settlement properly took account of Lenhart's proportionate liability, and it could not conclude it was made in good faith. The only estimate of total damages, 400,000 dollars, was included in Zahnleuter's

initial disclosures, and even assuming that amount was accurate, the 105,000-dollar settlement accounted for approximately twenty-five percent of the defendant's total exposure, although Lenhart defendants had greatest potential liability.

Counsel represented that the settlement was reasonable because he believed that Lenhart would be found no more than fifty per liable, but the court indicated there was no explanation for why that was so. In dicta, the court opined that a declaration or testimony from an expert familiar with pertinent valuation criteria may be sufficient to show a settlement falls within a reasonable range. So can a declaration from an experienced settlement negotiator.

But the court determined that two conclusory declarations from counsel were insufficient. And that court concluded by citing Espinoza, an Eastern District of California case, "Whatever method is utilized in a contested case, the information provided must be sufficient to reasonably place a value on the underlying claim so the court can conduct a Tech-Bilt analysis."

Both sides also refer to Navarro from the Central District of California to support their positions. In Navarro, the district court was confronted with whether there was sufficient evidence to make a good faith finding under 877.6. Norma Navarro and Waldemar Valentin were driving in a car that

was involved in an automobile accident with a tractor-trailer truck that Fred Hamilton had parked on the side of the freeway. Valentin, who was driving, lost control of the vehicle, collided with the truck. Valentin and Navarro were both seriously injured and sued Hamilton and his company for various negligence causes of action.

Hamilton removed the case to district court, and counterclaims alleging that Valentin, who pled guilty to DUI, was driving under the influence, which was a sole or substantial factor in his and Navarro's injuries. Hamilton asserted equitable indemnity and contribution claims against Valentin. Valentin and Navarro settled for 15,000 dollars in exchange for a release of all claims arising from the accident, and Valentin sought a good-faith finding under 877.6.

The court began its analysis by recognizing that principle among the Tech-Bilt factors is whether the amount paid in settlement bears a reasonable relationship to the settlor's proportionate share. The court noted that the parties had not provided a sufficient evidentiary basis to determine whether the settlement was made in good faith.

The court recognized that in most cases, a settling defendant's good faith is uncontested and a bare bones motion and declaration would suffice. Then, the burden would shift to the nonsettlor to demonstrate lack of good faith. But if the issue of good faith was contested, the settling tortfeasor must

make a sufficient showing of all Tech-Bilt factors, either in the original moving papers or in counter declarations.

The court concluded by quoting City of Grand Terrace, 192 Cal.App.3d 1251, "A necessary corollary to the definition of good faith in Tech-Bilt is that the trial court's consideration of the settlement agreement and its relationship to the entire litigation in a contested setting must proceed upon a sufficient evidentiary basis to enable the court to consider and evaluate the various aspects of the settlement. If there is no substantial evidence to support a critical assumption, then a court would abuse its discretion in making a good-faith finding."

Here, there is a dearth of evidence from which the Court could make a good-faith finding. First, in the trustee's declaration, he summarily states the following, "I further believe that the settlement agreement satisfies each of the good-faith factors relevant to finding that the settlement agreement was entered into good faith."

The only other evidence that the trustee presented to support his position that 877.6 good-faith factors are met is the November 29th mediator's report and the January 11th mediator's statement. A careful reading of both those reports or statements does not advance the trustee's position. In the November 29th mediator's report, the mediator mentioned good faith three times.

The parties "worked hard, consciously and in good faith, to finalize a resolution". Two, he was "fully satisfied that it is only by virtue of the parties' good faith and commitment to achieving a settlement". That one was reached. And three, the parties, in particular, the trustee, negotiated the settlement with commitment and in good faith. These statements address how the parties participated in the negotiations before the mediator but provide no evidence from which the Court can make a good-faith finding required by 877.6.

The January 11th mediator's statement likewise is insufficient. It indicates that the trustee and the Jetcraft defendants and FK defendants were aware of the Tech-Bilt factors and took those factors into account in reaching a settlement. The mediator opines that BAC, CAVIC, and University Leader and Glove's opposition "do not treat the trustee and the Jetcraft and FK defendants fairly regarding their consideration of what a good-faith settlement requires."

The problem for the trustee is whether he and the Jetcraft defendants considered the settlement to be in good faith is not determinative. What is determinative is whether the Court has sufficient evidence before it from which to find that the good-faith factors have been met, and it does not. It is undisputed that the trustee had the ability to provide evidence necessary from which the Court could determine the

proportionate liability of the FK and Jetcraft defendants.

The trustee's financial advisers, first, Seabury and now FTI, have billed and been paid approximately a million dollars combined. The trustee did not present any evidence to substantiate a good-faith finding, other than a conclusory statement indicating that he believed the settlement agreement satisfies the good-faith factors and the January 11th mediator's statement that the trustee and settling defendants were aware of the Tech-Bilt factors and took them into account.

This is a far cry from being sufficient for the Court to evaluate the proportional liability of the settling defendants and the total approximate recovery. The trustee is correct that the burden is on the party asserting lack of good faith to show that the settlement is so out of the ballpark that it is inconsistent with the good-faith principles. But here, there is no evidence of what that ballpark actually is.

Finally, the trustee's assertion that good faith may only be challenged if a settlement is grossly disproportionate to what a reasonable person would estimate the settling parties' liability would be is a correct statement of the law. Here, however, there is no evidence from which a reasonable person could estimate the settling defendants' liability.

The trustee's argument in the reply brief regarding, one, what Bombardier's and the settling defendant's liability would be if he prevailed at trial; two, that Bombardier

benefited more from the settling defendants; and three, Bombardier would be independently liable for fraudulent transfer claims, which should not be factored into the settling defendants' proportional liability, do not alter this conclusion. Argument is not evidence. Therefore, even if California law did apply to the settlement agreement without sufficient evidence from which to make a good-faith finding, it cannot be approved.

The trustee also argues that Bombardier's concerns about proportionate liability are baseless because it has been dismissed with prejudice from the Jetcraft adversary proceeding. But the trustee has appealed that ruling, so any argument that Bombardier's concerns are irrelevant is unavailing.

Finally, although the motion was brought under Rule 9019, both the opposition and reply focus almost exclusively on whether 877.6 and the Tech-Bilt good-faith factors are met. As the trustee acknowledges, the standard for approving a 9019 motion is the same, or as one court opined, more exacting, than the 877.6 standard because the trustee has the burden of proof on a 9019 motion. As noted, there is insufficient evidence from which the Court can make a good-faith finding under Tech-Bilt.

Therefore, the Court finds that the trustee has not met his burden of demonstrating that the 9019 motion should or

could be granted.

There were a couple of other issues that I want to address regarding this motion in particular, and then we will take a recess, as I noted, and we'll come back for the remaining matters.

There were a couple of troubling issues involving the briefing. Regarding a number of issues, the trustee either did not address them in the motion, such as whether an adversary proceeding or a motion was appropriate for the relief requested, or summarily addressed them in a few lines, such as the applicability of California law. It was only in the reply brief that the trustee even addressed the proper procedural mechanism for seeking the relief requested, and he cited additional cases to support his position that California law applied.

And in the reply brief, the trustee changed the terms of the order after BAC raised issues regarding its scope that there was no modified order on the docket. The trustee as well as trustee's counsel are sophisticated, and they know it's inappropriate to sit back, wait to see if an opponent or the Court notices an issue, and then fully reply to it and fully brief it in a reply.

As the Court noted in its ruling, the Court need not consider an argument or case raised for the first time in the reply. In the future, if this type of briefing continues by

any party, I will not consider any argument, case, statute, et cetera that was not specifically mentioned in the motion.

There was also another issue that did not go unnoticed. The reply brief contained lengthy footnotes. As I'm sure each of the parties can recall, during a November 17th, 2021, status conference which the Court held because the trustee had filed an oversized brief without first receiving authorization to do so, the Court addressed a number of issues regarding parties flouting the rules, filing late briefs, et cetera. One of the issues that the Court specifically mentioned was that footnotes had gotten out of control, with some being a third or a half page long, and I ordered that footnotes would be limited to three lines. The reply brief in numerous places violates the Court's instruction.

To avoid any doubt in the future, if any party violates those direct orders, not just regarding footnotes, but regarding anything else that the Court addressed during that hearing, and that's Jetcraft docket number 343, there will be consequences, including but not limited to striking whatever argument, striking footnotes, up to and possibly striking an entire brief. I want to make sure everybody's on notice because that was the issue of a hearing, and the Court said in no uncertain terms and indicated what would be authorized and what would not be authorized.

With that, the hearing on the 9019 motion concludes.

Ms. Fornos, you are the prevailing party. If you would please upload an order within seven days via LOU that just says, for the reasons stated on the record, the motion is denied, that would be appreciated.

We will now be in recess. It's 12:13. We'll be in recess till 1:15, when the Court will take up the other matters in this case. Off the record.

(Recess from 12:13 p.m., until 1:15 p.m.)

THE COURT: Good afternoon, again. Calling matter number 10 in the Zetta Jet matter, which is the Chapter 7 trustee's seventh motion under LBR 2016-2 for approval of cash disbursements.

I see a number of people with their videos on. If you're going to be arguing this motion, I'll ask that you keep your video on. If you are not, then I'll ask you to turn off your video.

I see Mr. Bovitz.

MR. BOVITZ: Yes, J. Scott Bovitz, Bovitz & Spitzer, for the fee examiner, Nancy Rapaport.

THE COURT: Thank you.

Mr. Bernstein.

MR. BERNSTEIN: Good afternoon, Your Honor. Michael Bernstein of Arnold & Porter on behalf of Universal Leader and Glove Asset Investments.

THE COURT: Good afternoon.

Mr. Lyons.

MR. LYONS: Yes, Your Honor. John Lyons on behalf of the trustee.

THE COURT: Good afternoon.

And Mr. King.

MR. KING: Good afternoon, Judge. It's John King, the Chapter 7 trustee. I am present but will not be arguing.

THE COURT: Okay. Thank you.

So normally, these are very uncontroversial motions, but obviously there was an objection filed by Universal Leader and Glove Assets. And some of the issues raised by Universal Leader, Glover Assets are concerns for the Court, and the Court actually has other concerns.

I did issue an order yesterday asking for the appraisal that's referenced. There was a response filed indicating that the report contains highly sensitive information that if publicly disclosed may adversely impact the trustee's ability to maximize value for the estates.

Mr. Lyons, does that mean you can't give the Court a figure?

MR. LYONS: Your Honor, that's part of the issue we have. I mean, Your Honor, we will do with whatever Your Honor orders, obviously, but we're heading into an auction, and to disclose what that valuation number might be, Your Honor, might basically impose a ceiling on other bidders. So it has a very

detrimental effect. We're a participant. We're a judgment creditor. The bailiff is going to be selling the boat. But disclosing that figure could kill bidding, and that's why we wanted to talk to Your Honor first.

THE COURT: Okay. So I have a number of questions. The motion indicates that you've been in discussions with the Australian authorities regarding replacing the seizure warrant with the judgment that this Court issued. And we are -- because it sounds like the auction is going forward, but there was nothing in your motion that said when that would be or how it would be or what would happen.

MR. LYONS: Yes, Your Honor, that's still ongoing. We're working through DLA Australia with the Australia Federal Police, and they're working on the mechanics to do that. So we don't have a date yet. And we wanted to get this advance authority from Your Honor so once it does go forward, we're ready to go. But we don't have a date yet. It's still in process.

THE COURT: Okay. So I'm certainly not an expert in seizure warrants, but it appears that the District court here issued the seizure warrant, and it was relayed to the Australian authorities. Have you been in communication with the parties who obtained the seizure warrant here to see if they would be in agreement with what you're proposing that the Australian authorities do?

MR. LYONS: Yes, we have, Your Honor. Right now, the channel, though, is directly with the AFP because then they in turn discuss it with the Department of Justice here in the U.S.

THE COURT: Okay. How much is the monthly storage fee?

MR. LYONS: Boy, Your Honor, let me see this -- give me one second.

MR. KING: If I could just interject for one second, Your Honor. We have had discussions with the Department of Justice ourselves. I don't want to get into the details unless Your Honor requires it, but I also want that to be known.

THE COURT: That's fine. But it just seems to me the Australian authorities are merely doing what the Department of Justice are telling them to do. So it seems like you might not be talking to the entity that issued the warrant. And I don't think you were talking to the entity that issued the seizure warrant. And it seems like discussions should be ongoing with that entity, rather than the entity that's merely enforcing that seizure warrant.

MR. KING: Yes.

THE COURT: Okay. Mr. Lyons, how much are the storage fees?

MR. LYONS: Your Honor, I am trying to find it. I do have the stay here. I know it's in this -- because it is an issue that Mr. Lack did look at and believed to be reasonable.

THE COURT: Mr. who?

MR. KING: Mr. Lack, Your Honor. He's the Australian Marine Surveyor who we noted in our --

THE COURT: Yes.

MR. LYONS: Well, I'll tell you what. I'd give it by foot. It's $2.48 per foot, Australian dollars, to store it per day. So I'm trying to extrapolate that into the monthly fee.

I apologize, Your Honor. This isn't handy to me. It requires some math, but let me see if I can --

THE COURT: All right. Well, I'll let you work on that. I had other questions. What does that monthly storage fee entail?

I'm just thinking, and this is an imperfect comparison, but if I had a car that were sitting out for five years, it would require significant maintenance before it could be used. It would need -- the engine would need to turn over. It would need to be maintained. And the yard is in salt water, which is extremely corrosive, and ships and boats and yachts need to be maintained. And I don't know what Morimoto (phonetic) is doing for this yacht.

MR. LYONS: Your Honor, it's now out of the water actually. It's in shrink wrap. So it's no longer -- it's no longer in seawater. But Your Honor -- and I don't want to reveal too much sensitive information, but Mr. Lack did take into account the current state of the boat.

THE COURT: And that was that was my question. But it's no longer sitting in the water?

MR. LYONS: Yes It is no longer sitting In the water, correct. It sits on a dry dock, shrink-wrapped.

THE COURT: When was it removed from the water?

MR. LYONS: I believe it was -- and perhaps the trustee has a better recollection, but I believe it was beginning of this year or towards the end of last year. But it was in the water for a period of time. And certainly, that didn't enhance the value. I mean, it was purchased for over 3.4 million dollars back in 2017. So there has been some degradation of value. But now, it's out of the water. And certainly the valuation we have takes that into account.

THE COURT: And when you said beginning of this year or end of last year, you're talking about beginning of 2023?

MR. LYONS: Yes, I believe so, Your Honor. That's right.

THE COURT: So it was in the water from the beginning of this case for basically five years?

MR. LYONS: It was. Since the time it was seized, correct.

THE COURT: Okay. And was it maintained? Was someone turning the engine over? Was someone doing what regular maintenance of a boat in salt water needs to do?

MR. LYONS: We don't have direct information for that

because if Your Honor recalls, we were unable to obtain the writ of attachment, and it remained in Linkage's name. So we don't have a lot of visibility into actually what was happening during that time frame.

But I don't believe it was being operated or the engines run. I think it was just basically in the water being stored until it was then removed from the water.

THE COURT: And the fees that you indicate are currently owed are 225,000 dollars. That translates into U.S. dollars of roughly 150,000. You're actually asking for 75,000 dollars more than what the current amount is.

MR. LYONS: Yeah, I guess, Your Honor, we wanted to build in a little bit of buffer in case there are unforeseen costs that we're unaware of, and also for perhaps a limited time -- if we were to take title, judicial title. So there's a little bit of buffer into that. We would obviously endeavor to keep that as low as possible. And in the best of all worlds, Your Honor, the boat will be sold at a price that the trustee believes is within the range of market value.

THE COURT: And one thing that's troubling me about this, Mr. Lyons, and I just don't understand. Assuming I were to authorize the 225, okay, then you'd wait for the auction, and then you would credit bid that, hypothetically, and --

MR. LYONS: (Indiscernible).

THE COURT: -- you would then have to turn around and

sell the boat, or the yacht, whatever you want to call it. So why would you obtain more for the sale in a boat that's older than the authorities will be obtaining when they do their auction?

MR. LYONS: Well, Your Honor, I think part of it is that we're not in direct control of the marketing process. The judicial officer is. And if the bid -- if a bid would come in for just the storage costs, Your Honor, it would be just dramatically below the fair-market value. And it may well be -- certainly, and Your Honor, this is where I don't want to get into too much information because I think it -- I don't know how we can do this, Your Honor, because certain of the information, I think, falls into that highly sensitive information that I think would not be for the benefit of the estate.

THE COURT: Well --

MR. LYONS: More than just the number, Your Honor. More than just the number of the fair-market value.

THE COURT: I understand your concerns about confidentiality, Mr. Lyons, but the problem is I need to make an informed decision. And right now, you're asking me to make a decision based upon insufficient facts because you're saying that the value is significantly higher. You haven't given me anything to demonstrate that.

I don't know, and I'm going to take a recess for you

to calculate what the storage fees are, because assuming I granted the motion, then you credit bid it, then you'd have to store the yacht for the amount of time that you'd be marketing it. And I looked at the Code provision that you cited, and it looks like they generally market and sell property. You cited the entire civil code, but I did look for the sale procedures mechanism, and at least to me, at first blush, it looks like they're going to do essentially what you do.

MR. LYONS: Your Honor, can I make a suggestion?

THE COURT: Certainly.

MR. LYONS: Because we want to get you this information because I think this will definitely inform Your Honor's decision on this. Would it be possible to file a supplemental declaration, under seal, and the basis is this is highly confidential commercial information going to the bidding for the boat. If Your Honor disagrees that it should be under seal, you'll certainly deny the motion, and we can file it. But at least it will give you the information, Your Honor. And certainly, at the conclusion of the auction, don't need to seal it anymore. This is just a very temporarily limited sensitive information.

But I think it will inform Your Honor on the issues that you're raising. I'm trying to think of a way here, Your Honor, to not divulge that information because I think once I reveal it, Your Honor will understand why I'm so sensitive

about revealing this.

THE COURT: Well, in terms of an appraisal, and again, I've never been involved with the sale of a seventy-foot yacht, but I would assume anybody bidding on it would get their own appraisal before they bid on it, or do people bid on these things sight-unseen and they just assume it's going to have a certain value?

MR. LYONS: Well, no, Your Honor, but if you're a bidder and someone knows what your number is, they're not going to bid a penny over it. And I need to stop there because I'd love to add more and you'd see it in a proper context but -- I mean, Your Honor, listen, if you're requiring that, I'll lay it out. But I think it would be potentially detrimental to the ultimate values that we're going to be able to recover.

THE COURT: Well, let's do this, Mr. Lyons. Nobody has objected to, nor does the Court have the objection to, the 50,000 you're asking for enforcement expenses and the 50,000 that you're seeking of the other expenses. I don't believe Mr. Bernstein has objected, and there's been no objection by any other party. So those are authorized.

If you want to continue with this request for the Court to authorize 225,000 to pay off Morimoto, even though the amount is 151,000, I'm not sure where the buffer would come in. And that's why I was asking what are the monthly storage fees to have a better idea of, well, maybe if the auction didn't

happen for a year, maybe that's where that was coming in. But you weren't able to give me that information readily, although I'm sure you can.

So I'll authorize the 100,000 dollars, as I stated. And if you want to pursue the 225, then it's going to have to be explained in much more detail than it is here.

MR. LYONS: Understood, Your Honor. Could I suggest this as to get a holding date? We could file a supplemental declaration. We'll make sure and have unredacted the storage costs, everything else that isn't very sensitive, and we'll get that number to you.

But the sensitive information, we're going to -- we'd propose we file a motion to file it under seal, and we file an unredacted copy with Your Honor but on the docket, a redacted copy. And then, Your Honor, you can decide whether you're going to grant the motion to seal or not. And then we could continue the portion for the credit-bid cost over to -- at a next date -- there's no urgency right now. There hasn't been an auction date set. I'm trying to figure out the best procedural way to do this, but I --

THE COURT: Well, I think the best procedural mechanism, Mr. Lyons, is as you said, there is no urgency. There is no auction date set. I assume, an auction date today, they aren't going to see the auction's tomorrow. I would assume that they would want to get the best and highest bid,

and there might be at least a few weeks, if not a month, where the auction is publicized if it's anything like auctions of seized goods in the U.S. And then in that situation, you can come back and you can provide admissible evidence that the Court can consider in terms of whether or not it should authorize what you were asking for.

MR. LYONS: Yeah, sure. And I just want to let Your Honor know in advance, some of that information, we're going to request be kept under seal until the conclusion of the auction, and we'll file the appropriate motion for that for Your Honor's consideration and redact that information in the public version. And then the remainder of the supplemental declaration outlining the storage costs, we would then -- that would be in the public version that would be filed.

THE COURT: And just to --

MR. TOROSIAN: So just to be clear, Your Honor -- Jeff Torosian for the trustee -- it's more than just under seal. It has to be -- if Your Honor would entertain in-camera review, ex parte in-camera review, or at the very least, limited to attorney's-eyes only, because this is main-case stuff with parties who may -- we can't keep it from the parties if it's filed under seal. That doesn't really get us the protections we need.

We would need something even more than that, which would be attorney's-eyes only. Maybe that might get us there.

But anything short of that, we're hurting value. And we're getting very close to the line, I'm saying too much now, by hurting value, and that just hurts creditors. So we have to be very careful on even filing it under seal. That might not in and of itself be enough. It probably needs to be AEO protections as well.

THE COURT: Well -- yes, Mr. Bovitz.

MR. BOVITZ: Your Honor, J. Scott Bovitz for Nancy Rapoport.

We don't need to have a party on the boat, but one of the ways that the Court has reviewed expenses of professionals in this case is they're attached to fee applications, and the fee examiner reviews the application, the expenses, has discussion and dialog. And if the expenses were being advanced by DLA with respect to a mediator, she cares. Professor Rapaport will have something to say and have a discussion.

With respect to boat storage charges, she's not sure whether she's supposed to play a role in that. It's an expense of the estate. But it is an expense, and it's something where she could, confidentially or otherwise -- I don't know about the seal issues; I don't have any opinion -- but she could review this if the Court wants her to.

But we don't want to -- she doesn't want to step out of her lane. If her lane is review expenses, including boat charges, dock charges, and so forth, she will, and she'll be

happy to give her opinion. That may help on this. I don't know. We would love some instruction from the Court.

THE COURT: Thank you. I appreciate that, Mr. Bovitz.

I want to see what the storage charges are. I need more information. That's all I can say, Mr. Lyons.

MR. LYONS: Yeah, we --

THE COURT: How you choose to get it to me is up to you --

MR. LYONS: Okay.

THE COURT: -- but you are asking me blindly to say, here's 225,000 dollars that you may or may not use, and trust me, it's going to generate more funds for the estate. And as I said, to me, if you credit -- if I gave you the funds and if you credit bid, then you haven't provided any basis to substantiate that you would be likely to get more funds than what the auction would generate, and you would definitely be incurring more expenses because you'd have to pay the storage fees every month. So that's why the storage fees were important to the Court as well.

So I'm going to grant the two 50,000 figures, the 50,000 in terms of enforcement expenses, the 50,000 in terms of other expenses. I'm going to deny the 225 without prejudice. If you want to bring it, you can try to bring it in whatever way you think is appropriate. But I'm going to deny it right now, so I don't think it's worthwhile to expend more funds to

file a declaration now. I would wait until there's actually. An auction because it may never happen this year. You're discussing it. It may not happen.

MR. LYONS: Yeah, Your Honor, because we don't control it. But okay, I'll tell you. Okay, Your Honor. Understood. We will act accordingly. If for whatever reason, though, this auction gets scheduled quickly, we may be back in front of you on an emergency basis. And I hate to do that.

THE COURT: And I understand that. And I understand that, but if you know the auction is scheduled on March 1st and the auction is scheduled for April 15th and you bring your emergency motion on April 7th, the Court isn't going to look kindly on that, right?

MR. LYONS: I understand.

THE COURT: So you need to be the one to bring this to the Court in a timely manner. If you bring it on shortened notice, and I want when you bring it on shortened notice, if that's the issue, you need to file a declaration signed under penalty of perjury the day that you learned when the auction would be. Because I don't want there to be gamesmanship. I don't want it to be, oh, we don't need to do it now. We'll get in on shortened notice.

There needs to be a demonstrated reason in the record why it needs to be on shortened notice. And if you find out about it on March 1st and the auction is six weeks away, I

don't consider that any reason to file it on shortened notice. You have sufficient time to put it on regular notice.

MR. TOROSIAN: Judge --

MR. LYONS: Okay.

MR. TOROSIAN: -- (indiscernible) Your Honor. And again, I don't know who we'd be gaming in this situation, and certainly, we don't game anyone in anything we do. But just to be clear, we're still not addressing the confidentiality issue.

THE COURT: Well, you're going to have --

MR. TOROSIAN: Does Your Honor have a view for -- because once we do that on shortened notice, emergency notice, regular notice, doesn't matter, you're going to want to see what we're telling you right now we're going to have difficulty showing you. And so I'd prefer if we had a solution to that now, rather than just addressing this and incurring the ire of the Court when we're facing down an auction. Because it's going to be even worse then, because then bidders are getting ready to bid and they're going to know what our thinking of value is if we file something that's disclosed to the public, or even just the parties to this main case.

THE COURT: Well, Mr. Torosian, I'll leave it to you and Mr. Lyons how you propose to proceed. We'll take a recess.

I also do want to know what the storage fees are, Mr. Lyons.

MR. LYONS: Yes.

THE COURT: And during that recess, you can provide a figure when we come back. And then you can propose, and then we can talk about it.

Just so everybody knows, I have a hard stop at 2:30. If we're not done at 2:30, we'll have to pick this up either tomorrow afternoon or another day.

So I want to move on to the other matters on calendar in terms -- we'll come back to this after a recess with a proposal from Mr. Torosian and/or Mr. Lyons about how to deal with the issues of confidentiality that they indicate prohibit them from filing on the docket the --

MR. TOROSIAN: I don't want to belabor the point, Your Honor, but that is the suggestion that we file it under seal with AEO protections at the time that we're ready to proceed with the auction. That is our suggested solution, and we're willing to entertain comments from Mr. Bernstein or others as to that.

But we're obviously happy to have Your Honor look at it, we're happy to have counsel of record look at it, but not parties (indiscernible) --

MR. LYONS: Right, and --

MR. TOROSIAN: -- proposed solution.

MR. LYONS: -- then Mr. Bernstein represents the only objector. So we certainly can provide it to Mr. Bernstein attorneys'-eyes only if that would satisfy some concerns.

THE COURT: Well, let me hear from Mr. Bernstein.

MR. BERNSTEIN: Yes, Your Honor. Thank you.

So look, with respect to information that in good faith is properly designated as highly confidential, that portion of what they're going to file, I'm fine with attorneys'-eyes-only. I think that's a reasonable way to deal with that portion of what they're going to file, not a whole motion, but that portion, which in good faith is reasonably designated as highly confidential.

As a general matter, attorneys'-eyes only is obviously, as the Court, very problematic because we consult with our clients to develop positions in litigation. And if we can't consult with our clients, that is fighting a battle with both arms behind our back. But if it is limited to what is in good faith properly designated as highly confidential information, the disclosure of which would damage the estate, then on that basis, I think attorneys'-eyes only in this particular contested matter is reasonable, and it would be -- and it would be acceptable to us.

THE COURT: And the other issue that will be raised, I expect, is that other counsel who didn't object to the 2016 motion will want to see it as well.

So Mr. Torosian, is your proposal only to provide it to Mr. Bernstein or to all counsel who want --

MR. TOROSIAN: No, I said all counsel of record, but I

mean, this is main case. We'd have to go through the list of who that would be.

MR. LYONS: Yeah, it would be unwieldy, Your Honor.

MR. TOROSIAN: It might be dozens of people. And it's just --

THE COURT: So then who --

MR. TOROSIAN: And it's just -- first of all --

THE COURT: Mr. Torosian, who would you propose that you provide it to, then? If it's going to be unwieldy -- you said all counsel of record, but then Mr. Lyons said something different. So what are you proposing in terms of who you -- because this is where we start getting into issues.

MR. TOROSIAN: Right.

THE COURT: So Mr. Lyons or Mr. Torosian, who do you propose that it be presented to?

MR. LYONS: Your Honor, I would propose certainly Mr. Maroko, the U.S. trustee's office, Mr. Bernstein, who raised an objection to the cash management order. We'd provide one to the fee examiner too. That wouldn't be any issue.

Your Honor, we could reach out to Bombardier and CAVIC. They seem to be the only other parties here who are really involved, as well as Jetcraft. But again, I think really the only objector, here, is Mr. Bernstein to the relief. So the broader we -- attorneys'-eyes only, look, we have fine counsel. I have no doubt that they're going to adhere to

confidentiality. But I'm just wondering if it's just going to add that one bit of confidential, sensitive information that Your Honor raised regarding the report.

THE COURT: Well, I think because of the nature of this litigation, I do believe you need to present it to Mr. Bernstein, CAVIC, Bombardier. I'm not seeing anybody from Jetcraft, FK, but I assume they would want to see it as well. The fee examiner, Mr. Maroko, and me, of course.

MR. BOVITZ: Your Honor.

THE COURT: Yes.

MR. BOVITZ: J. Scott Bovitz for the fee examiner. If you don't want the fee examiner to weigh in on this, don't pass the secret information to us where they can torture the fee examiner and get the details. No, I'm kidding about the torture part. But if you want her input, yes, then we need the information. So the Court needs to, please, do you want her assistance or not her assistance on this?

THE COURT: On this, I do not believe so. So thank you for raising that, Mr. Bovitz. And thank you --

MR. BOVITZ: Thank you.

THE COURT: -- Prof. Rapoport.

MR. TOROSIAN: And just to be clear, Your Honor, obviously, we'd be happy to have the examiner look at it, or either way is fine with us. I don't think she's in the market for a yacht like this, but maybe, you never know. But I assume

when we just went through that litany of parties, those are just counsel for those parties because it would be AEO.

THE COURT: That's correct. It would be --

MR. TOROSIAN: Great, and --

THE COURT: -- counsel for those parties.

MR. TOROSIAN: And we're okay with that, and we would obviously file this at the appropriate time when we have a date for the auction. And then we'll file a declaration in conjunction with that as to when exactly we learned of the date of the auction.

THE COURT: Correct.

Mr. Bovitz.

MR. BOVITZ: Your Honor, if there's going to be a disclosure to the fee examiner, don't give it to me. Give it to the fee examiner. And that way, we'll skip me because I can't not have a communication with someone if her input was interested. The Court has indicated no, so please, Mr. Torosian's offer is incredibly fine and nice, but don't give it to us because there's no need if she's not going to give an input and there's no reason to have an additional potential leakage of the secret information.

THE COURT: All right. So please do not provide it to Prof. Rappaport.

MR. LYONS: Okay.

THE COURT: All right. So Mr. Torosian, would you

please read out the names of the attorneys for the parties who you will be providing it to so there is no confusion.

MR. TOROSIAN: Your Honor, I wasn't writing it down, and I don't have all their names handy --

MR. LYONS: I can --

MR. TOROSIAN: -- but were you doing it, Mr. Lyons?

MR. LYONS: Yeah. Yeah, I could. Well, since they're -- I see them on the call. How about Ms. Fornos for Bombardier, Mr. Ciatti from Jetcraft, Mr. Bernstein, of course, for Universal Leader, and Mr. Maroko and --

THE COURT: Ms. Azlin for CAVIC?

MR. LYONS: -- Ms. Azlin. Ms. Azlin, right, for CAVIC.

THE COURT: Hold on. And the Court?

MR. LYONS: Yes, and the Court.

THE COURT: Okay. And Jetcraft and the FK defendants, they're represented by the same counsel; is that correct?

MR. LYONS: Yes.

THE COURT: Okay. So providing it to Mr. Ciatti would provide it to Jetcraft -- and Mr. Ciatti just turned his video on, and he's nodding yes. Okay.

MR. CIATTI: Yes. Yes, Your Honor. Thank you.

THE COURT: I just wanted to make sure that we didn't come back here with one party saying they were not privy to the information.

MR. CIATTI: Understood.
THE COURT: Okay.
MR. CIATTI: Thank you, Your Honor.
THE COURT: Okay.
MR. LYONS: And Your Honor, I'll make sure to sign a declaration of that effect.
THE COURT: Okay. All right. So I think we've solved that issue, but right now we don't have to address it because again, we don't know when or if that auction is going to take place. So in terms of the ruling -- and I did see you wanting to speak, Mr. Bernstein, just one moment -- I'm going to grant as to the 50,000 and the 50,000 and deny without prejudice the other request.
MR. TOROSIAN: Thank you, Your Honor.
THE COURT: Thank you.
Mr. Bernstein.
MR. BERNSTEIN: Thank you, Your Honor. Just two quick points.
One is just a clarification that I assume goes without saying, but so Mr. Lyons read out a name of individual attorneys. I assume that I'll be permitted to share this with my colleagues at Arnold & Porter who are also working with me on the Zetta Jet matter.
THE COURT: That's my understanding, but Mr. Lyons.
MR. LYONS: Well, why don't I speak in terms of the

law firm, then, Your Honor?

MR. BERNSTEIN: Yeah.

THE COURT: I think that's a better way of doing it.

MR. BERNSTEIN: Yeah. Yeah, that would be good.

MR. LYONS: Counsel for CAVIC, counsel for Bombardier.

THE COURT: I think that's appropriate.

MR. BERNSTEIN: Great. Thanks.

The only other issue is, and I'm happy to have the Court this on or not take this up as Your Honor chooses, but just given the comments that the Court and Mr. Lyons made about timing issues, as the Court knows, it is our view that if the trustee elects to purchase the yacht -- to make a credit bid to purchase the yacht, that that requires court approval because it's an out of the ordinary course use of estate assets. And I think they'd be credit bidding not only storage charges but their lien or up to the full amount of the lien.

And I'm prepared to argue that point if necessary. I'm happy not to argue it right now since you've ruled for today. The reason I'm mentioning it is we're talking about possibility of future dates, of scheduling, and Mr. Lyons said he might come in on an expedited notice to reseek these storage fees. And I just want it on the Court's radar that at least in our view, it's clear that under the applicable case law, not only is the paying storage fees require court approval, but buying a giant yacht requires court approval as well.

And again, I just want to mention that, and we can address it now or address it later today or address it sometime in the future. And I leave that to Your Honor.

THE COURT: It may be a nonissue because again, we're trying to read the tea leaves about when this auction might take place and what will happen.

But Mr. Lyons, if you care to weigh in and respond to that, I'd be interested in hearing your response.

MR. LYONS: Oh, well, Your Honor, I think, look, we have a judgment that Your Honor issued, and we're trying to enforce it in a foreign country, in Australia, and there's a judicial sale. I mean, I'm not sure what remedy we would have. Would we have -- would we have some kind of cross-border communication while the auction is going? Because prices move up, and they move down. We have a five-million-dollar judgment.

So I'm not sure how, mechanically, that would work because it's on the other side of the world. If we get into an auction, it prevents a lot of issues. The trustee, it has its business judgment. And he's going to have additional authorization to maintain the boat, or then we're back in front of Your Honor. So I'm just not sure how exactly that would work.

I mean, we could set up a cross-border, some kind of, like, hearing. But that's going to be pretty problematic.

THE COURT: Mr. Bernstein.

MR. BERNSTEIN: Yeah, for sure I wasn't envisioning the Court staying up in the middle of the night in real-time with the clanging of boats in the background.

But the point is that if under the case law and ordinary-course use of estate assets is something that a company, either this company or comparable companies, does in the everyday, ordinary, typical course of its business operations, the Ninth Circuit case law refers to the vertical test, which means what this company typically does day in and day out, or the horizontal test is what other comparable, similar companies in the same business do day in and day out, things like retailers selling their inventory to customers or airlines selling tickets or paying landing fees or buying fuel and paying FEOs and so forth. And that's ordinary course.

And this is just -- this is just not ordinary course, buying a giant seventy-foot allegedly-multimillion-dollar yacht, whether it's by credit bid or by cash, is not something that a charter jet company, or particularly a defunct charter jet company that's not operating a business, does every day in the ordinary course.

Other cases within this circuit say ordinary course means something that a creditor doing business with this company would expect the company to be doing day in and day out as a normal course of its business. And a creditor of a

charter jet company or a defunct chart company, either way, I wouldn't expect the company to be -- it would be selling block hours, if it were still operating, and paying its pilots and wages and so forth. It wouldn't be buying seventy-foot yachts. So we think it's really clear under the case law that this is not ordinary course.

That doesn't mean that -- well, let me say this. It's even more true in this case for a reason that Your Honor mentioned, which is that when you buy this yacht for a credit bid, if they buy it, you're necessarily taking on a whole host of other expenses. We've focused in the little discussion today on storage expenses, and Your Honor properly raised the question of it's not just these 225 or 150,000, but it's the future storage expenses for who knows how long until they resell out the boat, if they're able to resell the boat.

But it's other stuff. It's security and it's maintenance and it's insurance and it's cost of marketing and sale and so forth. And once you buy the bulk, you're necessarily taking those things on. The trustee says, we'll come back to the Court, but what's the Court going to do once you have a boat there? If you buy the boat, you're necessarily -- so it's not only a big credit bid of an out-of-the-ordinary-course nature, but you're necessarily then taking on a bunch of other expenses, the amount of which we don't know. And that's why Your Honor sought the monthly charge

information for storage, but there's a lot of other stuff besides storage when you own a boat.

And so it seems very clear to me that this is out of the ordinary course. And that's why we raised this, because the only stated purpose of paying the 225,000, or 150,000, whatever it is, if you use U.S. dollars, is because the trustee says, well, if we make the credit bid and buy the boat, we're going to have to pay those storage charges. I mean, there's no evidence to support that so I don't know if it's true or not, but that's what they say.

But anyway, if the only purpose of paying the $225,000 in accrued storage charges is in connection with buying the boat, and if buying the boat, as we believe, requires court approval, then it doesn't make any sense for the Court to authorize 225,000 dollars in storage charges before the Court has even been asked to approve the out-of-the-ordinary-course purchase of the boat. It's putting the cart before the horse.

Now, I'm not saying with all of this that the trustee could not meet the legal standard to convince Your Honor to authorize the purchase of the boat. You'd have to -- there's a bunch of issues because right now, they haven't even sought that so they haven't presented any evidence. So what is the boat worth, then.

As Your Honor asked, what makes anybody think they're going to be able to -- the trustee is going to be able to sell

it more afterward after they own it than it's going to sell for at the auction where it's being marketed and how long is it going to take to sell and what are the costs of sale and how much is this future storage charges, not the 225, and how much are the maintenance costs and the security costs and the insurance costs and balance that all against the benefit to the estate of buying this yacht.

And I don't know, maybe they can meet the standard, but for now, they haven't presented any evidence, and they haven't even asked Your Honor to approve it. And so that's why I raised this issue because if they're just asking you to authorize the 225,000, then I think that doesn't make any sense without seeking and obtaining approval to make a credit bid because that would be the only purpose.

So I think if they're going to seek renewed approval to seek approval to pay the accrued past storage charges, first of all, we should get the number right, without fudge factors and whatever you call it, extra dollars baked in. We should get the number right, but then they should also, at the same time or prior to that, seek approval to make a credit bid because they need that approval in order to do it. And if they don't get that approval, then paying the storage charges doesn't make any sense at all, by their own reasoning.

THE COURT: Mr. Lyons.

MR. LYONS: Your Honor, if I may respond. Your Honor,

this is not -- this is a judgment. Mr. Bernstein has cited no cases in support of the proposition that a trustee before executing a judgment against an asset to recover an asset needs court approval. That's what we're doing here. We are going to recover this boat to have title.

Now, we're going to be looking at the auction and trying to -- if we can get a good price out of it, then we're going to -- then the trustee and his exercises business judgment, we'll take it. But if we would have title to the boat, Your Honor, then no question, if we would have to -- if we would resell it, we would then -- it would be subject to Your Honor's higher or better 363.

But right now, we're just executing a judgment. I mean, as Mr. Bernstein's suggesting, if we have a judgment against, okay, Mr. Wu, who entered the judgment against, are we supposed to hold off on executing that judgment in a foreign jurisdiction to recover a valuable asset? That's not what the Code says. And he's cited no case to say that you need 363 approval to execute a judgment that Your Honor -- that Your Honor (indiscernible). It would hamstring the trustees worldwide when they're in foreign jurisdictions to recover assets.

THE COURT: Okay. So this isn't before me right now. Obviously, this is a peripheral issue for what was addressed in the 2016 motion.

Mr. Lyons, you're on notice that Mr. Bernstein is likely to raise this when/if you file the motion to pay the storage fees, and so you can address it at that point. Mr. Bernstein, you can respond. And then the Court will have an opportunity to weigh in on it. But right now, I don't have that before me, and I'm not going to opine on something that neither side has briefed and I haven't had a chance to analyze or review the law on.

So anyway, in terms of what's before me, I'm granting the 2016 motion for the 50,000, 50,000. I am denying without prejudice the 225. And we've already talked about how that needs to be brought again.

But I do again want to caution, if you are going to seek relief on an expedited basis, there has to be a declaration signed under penalty of perjury explaining exactly when you found out about the date of the auction and why you waited a week, two weeks, three weeks and why it needs to be held on shortened notice. Because just coming in saying the auction is next week, that is not going to be persuasive.

Okay. All right. So that's it on the 2016 motion.

I did want to say one other thing. There's an issue that was raised in terms of the 9019 motion. It was raised again by Mr. Bernstein in opposition or in response to the 2016. It's regarding treating Zetta USA and Zetta Singapore's estate as one. Universal Leader highlights that there are two

separate debtors, two separate estates with separate assets and liabilities.

The trustee responds that the Court authorized him to use one debtor-in-possession account. That misses the point in the context of a first-day emergency motion in the then-Chapter 11 to authorize the continued use of debtors' cash-management system. In authorizing the maintenance of pre-petition bank accounts, the Court granted the trustee authority to have the debtors' accounts receivable be deposited from the DIP account into two others, one for general payables and one for payroll.

Nowhere in that motion, which was docket 23, or the order, docket 368, was the Court asked or did the Court rule that the debtors do not have to maintain separate accountings of assets and liability. So I want to make sure everybody's on the same page. Saying that I authorized it in that order, which was a first-day motion, is not correct. Okay.

I don't believe any more argument is necessary. Mr. Lyons, if there's something you'd like to say, you're welcome to, but I think we're pretty much done with that.

MR. LYONS: There is certainly accounting for all the moneys received, Your Honor. And we laid it out, I think, in my previous reply, where ninety-five percent of the proceeds arise from the settlements we've had in the adversary actions. So ultimately people will be able to object or frankly, review what a proposed distribution would be based upon those

settlements. It really is those settlements accounts that took the assets of the estate.

THE COURT: But again, I don't think that's the issue raised by Mr. Bernstein. The issue raised by Mr. Bernstein is there's the fifteen-million-dollar element settlement, how much should be allocated to Zetta USA and how much -- the fact they came in --

MR. LYONS: Right.

THE COURT: -- from three or four settlements, I don't think that's looking at it on the opposite end. It's what estate, USA or Singapore, is the one that should receive those funds. So I think it's a different focus, Mr. Lyons.

MR. LYONS: Yes, and ultimately, the trustee will propose the allocation and Mr. Bernstein and others can object and Your Honor will determine what the allocation should be. But I mean, I guess to do it now, the money's in the door. I mean, we will. If Your Honor would like us to move for substantive consolidation, if that's the right remedy, or if the --

THE COURT: I'm not telling you, Mr. Lyons, how to address the case. I'm not telling you how to handle the case. I'm not saying it should or it shouldn't be substantively consolidated. All I'm saying is indicating that the Court authorized you not to keep separate accounting of the assets and liabilities of the two debtors based upon an order that was

entered in a first-day motion is not an accurate statement of what was before the Court or what the Court ruled in that order. I just want to make sure we're all on the same page of that. Okay. Thank you.

MR. LYONS: Understood, Your Honor.

THE COURT: All right. Hold on.

THE COURT: Yes, Mr. Torosian. Oh, Mr. Bovitz.

MR. BOVITZ: Mr. Bovitz.

THE COURT: Mr. Bovitz.

MR. BOVITZ: We look the same.

Your Honor, the fee examiner shares the concern, but from an administrative and accounting standpoint, because if a professional is doing work with respect to Zetta Jet Singapore, as you will call it, or Zetta Jet USA, they should be allocated and billed and authorized accordingly. Otherwise, it may already be a nightmare kind of as we get to final fee applications.

But it is time for professionals to consider whether they should be billing just to a single Zetta Jet account or to the respective estates. And the Court may wish in the future to hear the fee examiner's report. And of course, that also means that with respect to what's appropriate work, what's reasonable for that at the time when incurred makes sense with respect to USA versus Singapore.

So I don't know when. There's no motion for

substantive consolidation before the Court. You raised the issue. I wanted to share the examiner's concern.

THE COURT: I appreciate that, Mr. Bovitz. Thank you. And you're right, there is nothing before the Court, but it's been raised at least two times by Mr. Bernstein, I believe.

And it's something that's not going to go away, Mr. Lyons. How you get a ruling on it, I don't know, and I'm certainly not saying. Whether it's okay to wait until the absolute end of these cases, I don't know. But that seems to be what you're planning to do, and I don't know whether that is or isn't appropriate. That's all I'm saying. It's your case. You have to deal with it. And you know it's an issue that's not going to go away is best I can say.

I just wanted to make sure there was no misunderstanding of what was asked in the first-day motion and there's no misunderstanding of what was before the Court and there's no misunderstanding of what the court's order meant. And it absolutely did not say that the debtors did not have to maintain separate accountings of their assets and their liabilities.

So I think we've said plenty regarding that. Moving on to the next matter on calendar is the status conference in King v. Jetcraft.

Mr. Lyons, how do you wish to proceed?

MR. LYONS: Your Honor, I think I'll let Mr. Torosian

address the next steps.

THE COURT: Mr. Torosian.

MR. TOROSIAN: Yeah, Your Honor, we're going to have to circle back with Mr. Ciatti on the one hand to see if, given your ruling -- first of all, we have to digest your ruling. Secondly, we have to circle back with Mr. Ciatti to see if there is a settlement to salvage.

We're going to have to circle back with Judge Gross to see if he's even willing to consider further mediation of this or if he's so insulted by the parties' arguments to this that he doesn't want anything to do with it. I don't know the answer to that. I can see the latter being a strong possibility.

We're going to have to consider what we're doing as a law firm because right now, we're owed fifteen million dollars, and we're basically being forced to proceed with a case that I'm not sure the parties even want to proceed with at this point. So we have a lot to digest. I have to talk to my senior leadership at my firm, my CEO and managing partner. We have to talk to the parties. We have to talk to Judge Gross.

So I suggest -- the good news is I don't think I've heard Your Honor or Bombardier's counsel speak so highly of our claims against Bombardier until today, so I think we all know those claims are coming back from appeal. But regardless, we need to get through all of that and then circle back to Your

Honor and tell Your Honor what we think we should do. And we'd ask for a two-week continuance to report back to Your Honor on status.

THE COURT: Okay. So today is February 15th. You're suggesting that we come back on March 1st so you can report how you intend to proceed; is that what you're suggesting, Mr. Torosian?

MR. TOROSIAN: If that meets with Mr. Ciatti, because he's a party to this as well, if that meets with his scheduling --

THE COURT: Mr. Ciatti.

MR. CIATTI: Thank you, Your Honor. Michael Ciatti on behalf of the Jetcraft and FK defendants.

I mean, I agree that there are a lot -- a lot needs to be done, and I do have some concern that trying to do it in two weeks is reasonable. And so I don't want to come back to the Court with a nonreport, so I guess I would suggest we might need a little bit more time, just to make it a productive next session so --

THE COURT: I agree. I agree. So hold on one sec. Let me check another calendar.

Let's go to March 22nd. Does that work? I'll just go around and ask everybody I see on screen.

Mr. Bovitz.

MR. BOVITZ: Fine, Your Honor.

THE COURT: Mr. Lyons.
MR. LYONS: Yes, that works.
THE COURT: Mr. King.
MR. KING: Yes, Judge.
THE COURT: Prof. Rapoport.
PROF. RAPOPORT: Your Honor, except for something that's probably going to happen between 9 and 10, it works for me, but Mr. Bovitz can cover it for me if he's available.
THE COURT: Mr. Bovitz.
MR. BOVITZ: I'm available on the 22nd, Your Honor.
THE COURT: Okay. Mr. Torosian.
MR. TOROSIAN: I'm available. But Your Honor, this is just for status of Jetcraft. I don't think we need the fee examiner and fee examiner counsel for that hearing, but I'm happy --
THE COURT: Okay.
MR. TOROSIAN: -- happy to have them attend if you think we do.
THE COURT: I don't believe so, but I wanted to give everybody an opportunity to be heard.
Mr. Ciatti.
MR. CIATTI: Your Honor, the 22nd works. Thank you.
THE COURT: Okay. Mr. Bernstein. I don't know if you wish to be heard.
MR. BERNSTEIN: That's fine. If we participate, I'll

be on or one of my colleagues will be available.

THE COURT: Okay. And just in case the fee examiner does want to participate, I'll say March 22nd at 10. So that way, you don't feel excluded, Professor.

PROF. RAPOPORT: Thank you, Your Honor.

THE COURT: All right. So that's matter number 12.

The rest of the matters, unless I'm missing them, are the interim fee applications of DLA Piper. And as I said almost a year ago, I wanted the fee applications to be filed every three months. I wanted the fee examiner to have a chance to review them, opine on them, and provide her report. I am not going to rule on any fee applications of DLA Piper until all of the appeals are finally resolved. So I'm just going to keep continuing these. That shouldn't be a surprise. I had mentioned that at an April hearing last year, and that's what I've been doing for all of DLA's fee applications.

For the other professionals, their fees are insignificant in the scheme of things when you consider DLA's fee applications.

Mr. Bovitz.

MR. BOVITZ: Your Honor, the fee examiner might suggest that given the modest amount of other professional fees that perhaps you'd like to move the next fee hearing to May instead of the fairly short run that you'd had. We'd suggest mid-May, but there's nothing magic about that, simply to allow

a little bit bigger buildup of professional fees relative to the fee application expenses.

THE COURT: I think that makes sense. We could do this. Either May 17th or June 28th, either one works for the Court.

MR. BOVITZ: They're both fine with me. And the fee examiner has her hand up, Your Honor.

THE COURT: Prof. Rapoport.

PROF. RAPOPORT: Thanks, Your Honor. I have a slight preference for May 17th because I'm not sure when I'm going to have a little bit of eye surgery.

THE COURT: Oh, no. Okay.

PROF. RAPOPORT: Okay.

THE COURT: Then we'll do May 17th. And we'll just continue DLA's. And then, that will be the date for the hearing on all of the other professionals' fee applications as well.

I believe those are all the matters on calendar. I'll just go around and see if I missed anything.

Mr. Bovitz.

MR. BOVITZ: Was it 9 a.m. on the 17th, Your Honor?

THE COURT: 9 a.m. on the 17th, Professor, unless you're teaching because I know sometimes Wednesdays are difficult.

PROF. RAPOPORT: The good news, Your Honor, is I'm

free that day.

THE COURT: Okay. Great. So fee apps will be Wednesday, May 17th at 9.

Mr. Lyons, anything further?

MR. LYONS: Nothing further, Your Honor.

THE COURT: Thank you.

Mr. King, anything further?

MR. KING: No, Your Honor.

THE COURT: Thank you.

Prof. Rapoport.

PROF. RAPOPORT: Thank you, Your Honor. Nothing further.

THE COURT: Thank you.

Mr. Bernstein.

MR. BERNSTEIN: Nothing for me, Your Honor. Thank you.

THE COURT: Thank you.

Mr. Torosian.

MR. TOROSIAN: Nothing for me, Your Honor. Thank you.

THE COURT: Thank you. And there's a number of people still on, but they don't have their videos on, so I assume that means they don't wish to be heard. All right. That concludes the hearings for today. Off the record.

MR. TOROSIAN: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 2:12 PM)

I N D E X

C E R T I F I C A T I O N

I, River Wolfe, certify that the foregoing transcript is a true and accurate record of the proceedings.

/s/ RIVER WOLFE, CDLT-265

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Date: February 20, 2023

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